SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 211

TEXTILE WORKERS UNION OF AMERICA,
PETITIONER,

vs.

LINCOLN MILLS OF ALABAMA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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[fol. 1]

IN THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ALABAMA, NORTHEASTERN DIVISION

No. 3124

TEXTILE WORKERS UNION OF AMERICA, CIO, Plaintiff,

versus

LINCOLN MILLS OF ALABAMA, a corporation, Defendant

COMPLAINT—Filed January 14, 1955

I

Plaintiff, a labor union, is an unincorporated association whose duly authorized agents are engaged in representing, in the Northern District of Alabama, members who are and have been employees of defendant in an industry affecting commerce within the meaning of the Labor Management Relations Act of 1947. Defendant is a corporation doing business in and having its principal place of business in Huntsville, Madison County, Alabama, within this District. Defendant has annually purchased large amounts of raw materials from and shipped large amounts of finished products to points outside the State of Alabama. This is a suit based upon violation of and seeking specific performance of a contract between a labor organization representing employees in an industry affecting interstate commerce as [fol. 2] defined in said Act, as more fully hereinafter appears, and arises under said Act regulating commerce. (29 USC 185; 28 USC 1337.)

II

On or about June 27, 1953, defendant executed a contract with plaintiff in writing. This contract covered and was executed by plaintiff as collective bargaining representative for and agent of certain employees of defendant at its Huntsville, Alabama, plant, including Cloth Rollers, Card Grinders Helpers, Slubber Hands #2 and 4 Card Room, Sweepers, Transfer Man, Can Dumper and Roving Marker, Frame Fixers, Fales and Jenks Twister Tenders and Def-

fers, Warp Twister Creeler Hands, Warp Twister Deffers. A copy of said contract is attached hereto as Exhibit "A."

III

In accordance with the provision of said contract, grievances were filed upon behalf of employees covered by that contract and copies of said grievances are attached hereto as Exhibit "B" and through "K." Said grievances were not adjusted under the provisions of Step 2 and were not adjusted within fifteen days after their presentation under Step 3 of Article VIII of said contract entitled "Adjustment of Grievances." Plaintiff duly gave timely written notice in accordance with Article IX Paragraph (F) of said contract thereby submitting said grievances to arbitration. Defendant has failed and refused to confer and endeavor to agree upon the selection of an Arbitrator. Plaintiff has duly requested the American Arbitration Association to submit a list of five qualified Arbitrators and defendant has failed and refused to participate in the selection of an impartial Aribtrator and now refuses to [fol. 3] submit said grievances to arbitration as required by said Article IX (E).

By the above described omissions and breaches of contract on the part of defendant, the employees to whom said grievances applied and who are represented by the plaintiff as their statutory sole collective bargaining agent and in this suit have not received the benefits of the above collective bargaining contract, all to their substantial and irreparable injury.

IV

Plaintiff and the employees whom it represents are without adequate remedy at law and will suffer immediate continuing and irreparable injury, loss damage unless defendant is ordered specifically to perform the above contract, and in particular Article IX (F) thereof, and is restrained from continuing to refuse to carry out its obligations thereunder.

V

Plaintiff in behalf of itself and the employees whom it represents has requested defendant to perform its obliga-

tions under said Article IX (F) but defendant has refused and failed to so perform, as alleged above.

VI

Plaintiff submits to jurisdiction of this Court and offers to do equity.

Wherefore, plaintiff demands;

1. That its right and the right of the employees whom it represents under Article IX (F) of the collective bargain-
[fol. 4] ing contract with respect to arbitration of said grievances be determined, and that its incidental damages and the incidental damages of employees represented by it as a result of defendant's violations of the terms of said contract, be fixed.

2. That defendant specifically be required to perform Article IX (F) of said contract particularly with respect to said unresolved grievances which are Exhibits "B" through "K" hereto.

3. That defendant be restrained from in any manner failing or refusing to perform its obligations under said Article IX (F) and particularly with respect to said grievances.

4. Incidental damages in the sum of Twenty-five Thousand Dollars ($25,000.00) is the amount of damages sustained by plaintiff and the employees whom plaintiff represents.

5. That defendant be temporarily restrained and enjoined by the injunction of this Court and in the form prayed above, and that upon appropriate determination of this cause said injunction be made final.

6. That plaintiff may have such other and further relief as by this Honorable Court may be deemed just and equitable in the premises, all at defendant's cost.

7. If specific performance is not granted plaintiff, that judgment be rendered against defendant in the sum of Twenty-five Thousand Dollars ($25,000.00).

[fol. 5] 8. That appropriate process may issue commanding defendant to answer this Bill of Complaint and to abide

by such decree as this Honorable Court may make in the premises.

Textile Workers Union of America, CIO, By (S.) Benjamin Wyle, (Benjamin Wyle), General Counsel.

99 University Place,
New York, New York.

Cooper, Mitch & Black, By (S.) Jerome A. Cooper.

1329 Brown-Marx Building,
Birmingham, Alabama.

EXHIBIT "A" TO COMPLAINT

Copy of Agreement dated June 27, 1953

Agreement
(1953-1954)

Lincoln Mills of Alabama

and

Textile Workers Union of America, CIO.
(Local Union No. 230)

June 27, 1953

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Agreement,

Agreement entered into this 27th day of June, 1953, by and between Lincoln Mills Of Alabama (hereinafter called the "Employer"), party of the first part; and Textile Workers Union Of America, *Cio,* (hereinafter referred to as the "Union"), party of the second part.

[fols. 9-10] Witnesseth:

In consideration of the mutual covenants herein contained, the parties hereto agree as follows:

Article 1

Purpose And Scope Of The Agreement

The purpose of this Agreement is to provide orderly collective bargaining relations, to secure prompt and equitable

disposition of grievances, to establish fair wages, hours and other working conditions, to maintain a harmonious relationship between the Union and the Employer, and to prevent strikes and lockouts.

Article II

Recognition and Union Security

(A) Recognition: The Employer hereby recognizes and agrees to deal with the Union as the exclusive representative for the purposes of collective bargaining with respect to wages, rates of pay, hours of work and other conditions of employment for all employees, excluding executives, office and clerical employees, timekeepers, overseers, foremen and second hands.

The terms "employee" and "employees" as used in this Agreement, refer to each employee and all employees of the Employer for whom the Union is recognized as the exclusive representative for the purpose of collective bargaining in accordance with this Article.

[fol. 11]

Article IV

Wages

(A) Minimum Wage: It is agreed that each employee, except learners, shall be granted and paid for each day's work, an amount not less than one dollar three and one-half cents ($1.035) revised upward or downward according to this Agreement, multipled by the number of straight-time hours worked on that day in addition to all overtime and premium pay due the employee.

(B) Learners: The starting rate for new inexperienced employees shall be eighty-eight (88) cents per hour [fol. 12] for the first six (6) weeks of employment and one dollar three and one-half cents ($1.035) per hour thereafter, as a minimum rate. Learners placed on piece or incentive rate jobs during the learnings or the learner rate provided for in this Section, whichever is greater.

(C) Wage Rate Schedule: The hourly rates and expected average earnings rates for piece rate workers which are set forth in a Schedule marked "B" attached hereto and made a part hereof shall prevail during the life or

this Agreement. Any new rates effected through negotiation or arbitration shall be reduced to writing and attached to Schedule "B" as an amendment thereto.

It is agreed between the parties that the Company shall always have the right to assign or reassign duties to hourly paid workers.

(D) Wage Revision: Either party hereto may at any time request a general revision upwards or downwards in rates of pay, and any such revision shall continue in effect until the termination of this Agreement or any renewal thereof unless changed by mutual agreement or under the provisions of this Section.

Requests for a revision under this Section shall be in writing and shall be mailed or delivered to the other party not less than sixty (60) days prior to the requested revision date. Upon the giving of such written notice, the parties shall immediately negotiate the request. In the event of a disagreement or dispute between the parties with respect to such revision, the Union and the employees shall have the right to strike and the Employer shall have the right to effect a general revision of rates of pay, or shut down. Any such action shall not be deemed to be in violation of [fol. 13] this *Arg*eement which shall continue in full force and effect.

No proposal for a general wage adjustment shall be made until at least four (4) months after the last general wage adjustment and no such adjustment shall take effect prior to the expiration of six (6) months after the last general wage adjustment. Proposal for wage adjustment subsequent to the first wage adjustment shall be governed by a similar procedure: viz: four (4) months elapse before a new proposal and six (6) months elapse before effective date of adjustment except by mutual consent.

(E) Transfers: Employees who are temporarily transferred for the convenience of the Employer to work on jobs other than their regular jobs, shall receive the rates of pay applicable thereto, or their regular rates, whichever are higher; and under no circumstances shall any employee suffer a loss of earnings as a result of such transfer.

(F) Equality: Women employees shall receive the same

rates of pay as apply to men employees where they perform the same work as is performed by men.

(G) Third Shift Premium: The regular rates of pay for time worked during the third shift hours shall be five (5) cents per hour above the regular day rate.

(H) Reporting Pay:

(1) Any employee (excluding extras not assigned temporarily to a job, part-time workers and learners) reporting for work on his regular shift, or at the request of the Employer, without prior notice that he shall not report, [fol. 14] and who is not put to work shall be paid two (2) hours' pay for reporting.

Any extra who is assigned to a temporary vacancy shall be deemed unassigned on the day the regular employee returns to work and will not be entitled to pay for reporting on that day. Similarly, any extra shall be deemed unassigned on any day on which another employee exercises seniority to displace him from a temporary vacancy and such extra will not be entitled to pay for reporting on that day.

Employees who are absent of their own volition on the previous regularly scheduled work day will not be entitled to the reporting pay.

(2) Each employee who starts working a scheduled shift shall be, guaranteed a minimum of four (4) hours' pay unless he quits or voluntarily lays off; or is laid off by reason of a close-down of the entire department, or an entire department, or an entire room, due to an emergency beyond the Employers control, in which case employee involved shall be paid for the time actually worked or paid for reporting, whichever is greater.

(I) Price Rate Provisions:

(1) The minimum guaranteed wage for all piece rate jobs shall be 90% of the agreed earnings rate for the job or the plant minimum whichever is higher, and shall be calculated on a weekly basis.

In order to be entitled to the above guaranteed wage, any employee without a regular job in the classification

must have earned the guaranteed wage for five (5) successive days worked in the classification.

[fol. 15] (2) The Employer shall not change any existing piece rates unless changes are made in materials, machines or equipment, methods or conditions. Improved motions and processes introduced by employees or increased skill shall result in change in rates. The Employer will indicate to the Union the reason for proposing charges in piece rates. No changes may be made except by mutual agreement or arbitration as hereinbefore provided.

(3) New piece rates shall yield earnings equal to or better than those existing at the job.

(4) Piece work employees' production and earnings (in departments where presently posted) shall be determined daily and posted in the department within twenty-four (24) hours.

(5) Downtime: Downtime will be paid in accordance with the practical prevailing in 1947 and 1948 and described in principle in statement of practice as set forth in Exhibit "C" of this Agreement.

Payment of downtime on piece rate operations shall not relieve the Employer of any obligations imposed upon it by this Agreement to maintain piece rates and/or standards at such levels as to enable an employee of average ability and efficiency to earn expected earnings.

(J) Wage Information: Upon the request of the Union, the Employer agrees to submit a list of the low, high and average hourly earnings, exclusive of overtime and bonus payments, of piece and/or incentive rate employees by job classification and the number of employees in each job classification. Such request shall not be made more frequently than once each quarter.

[fol. 16] The Employer will provide the Union, and keep up-to-date, a list of all piece rates in effect in the Mill.

The Employer will post in each department of the mill and keep up-to-date a list of all piece rates in effect in the department.

(K) Payment of Wages: Payment of wages shall be made on the job on Company time not later than the end of the Friday shifts of each week for work performed the

preceding week and shall be by par check with recognition for legitimate deductions, including Union dues and initiation fees.

Article V

Work Loans And Work Assignment

(A) It is mutually recognized and agreed that the best interests of and the economic security of the Employer and its Employees require that the Employer shall have and maintain reasonable and efficient workloads, machine assignments and work standards based on sound management, engineering principles and practices. In keeping with the foregoing, the Employer may from time to time revise and modify work assignments and/or piece rates and establish new work assignments or rates in accordance with recognized sound engineering principles and practices. It is agreed that routine, minor, or day to day changes in to be based on the full use of an employee's time during his work day, working at the normal operation pace of an average qualified employee with adequate allowance for fatigue and personal needs. The fatigue allowance will be enough so that the average employee can maintain his work [fol. 17] assignment day after day without injury to himself. It is also recognized that normal machine or material delays or interferences will be compensated for in the standard. The Union and the affected employees shall have the duty and responsibility to accept workloads, machine assignments and piece rates, either new or changed, established in keeping with the above principles, and to cooperate fully with the Employer in giving said work assignments and piece rates a fair test. The procedure which will be followed is as follows:

(B) The Employer shall, upon written notice have the right to change or modify existing work assignments or piece rates and to establish new assignments or piece rates within the principles set forth in Paragraph (A) above. It methods, processes, or facilities on hourly paid jobs shall not be regarded as work assignment changes within the meaning of this Article; nor shall routine changes or mechanical corrections necessary to carrying out a scheduled program in connection with piece workers be con-

sidered a work assignment change within the meaning of this Article.

As has been done under prior Agreements the Employer will furnish the Union such information as may be available in order that the Union be aware of the changes made by the Company and the basis therefor, and the Company will give the employees such instruction as is necessary.

It is further agreed that when the changes are made effective the employees will cooperate and perform to the best of their ability in order to give the change or modification a reasonable and fair test.

[fol. 18] The first four (4) weeks immediately following the effective date of change or installation will be considered a trial period. During the first four (4) weeks of this trial period, the employees will be paid not less than their former average hourly earnings as provided in Paragraph (D) of this Article. By mutual agreement, the trial period may be extended beyond the four-week period, with or without a guarantee of average earnings.

(C) Any affected employee or the Union may file a grievance within two (2) weeks after the end of the trial period. If no grievance has been filed at the end of that time, the change or modification shall be considered established. If the Union feels that a rate for the changed assignment or work load of an hourly paid worker is out of line with that paid on other jobs with comparable workloads or assignments, it may raise such question as a grievance if it cannot be adjusted by negotiations.

(D) Price rates may be fairly adjusted by the Employer in connection with work assignment changes. In such case the new rate shall be set to yield average hourly earnings for the group on the new work assignment which are not less than the average straight time hourly earnings of the group on the old work assignment for the last Social Security Quarter which precedes the notice of change, except in cases in which the workload is found to be clearly out of line with the workload standards of the Employer heretofore found satisfactory or with other satisfactory workloads in the plant.

(E) In the event of an arbitration in which the Em-

ployer presents detailed standards based on adequate studies, the Board of Arbitrators shall give major con-
[fols. 19-20] sideration to the Employer's standards and studies (and their adequacy as measured by Paragraph (A) of this Article) together with the Union's objections to the validity of said standards and studies. If they order a change in the work assignment or piece rates they shall do so by specific reference to the factors in the Employer's standards which are found to be out of conformity with Paragraph (A), or improper, and shall clearly state the basis of such findings.

(F) It is further agreed that the Board of Arbitration shall have the right to adjust compensation retroactive to the date of the change.

(G) Any dispute arising from the operation or interpretation of Article V shall be subject to the grievance procedure up to and including arbitration.

[fol. 21] Article VIII

Adjustment Of Grievances

(A) Procedure: Should any employee have any grievance arising from the operation or interpretation of this Agreement which pertains to wages, rates of pay, hours of work or other conditions of employment, an earnest effort shall be made to adjust such grievance immediately in the following manner:

Step No. 1: Between the Room Steward accompanied by the aggrieved employee, in the employee's discretion, and the department Overseer, or Second Hand in the absence of the Overseer.

Step No. 2: Between the General Shop Committee and the Mill Superintendent accompanied by the aggrieved employee, in his discretion; provided that the General Shop Committee shall have submitted to the Employer a written statement of the grievance, containing all information available in order that the Company be aware of the basis therefor, at least forty-eight (48) hours prior to the grievance meeting. If such grievances are not submitted at this step within thirty (30) working days after the occurrence or inception of the grievance, unless cause of the

grievance is still current, they will not be considered void, [fol. 22] except as set out in Article III—"Discipline and Discharge."

The Mill Superintendent shall reduce his answer to writing and deliver it to the Committee within ten (10) working days.

Step No. 3: Between a representative of the Union and a representative of the Employer's executive management, accompanied by the General Shop Committee in its discretion.

The adjustment of any grievance under the above procedures (Steps 2 and 3) shall be reduced to writing and signed by representatives of the Employer and the Union.

Step No. 4: If the grievance shall not have been adjusted by the above procedure within fifteen (15) days after its presentation under Step No. 3 (unless an extension of time is agreed upon), the party presenting the grievance shall be governed by the provisions of Article IX (F) hereof.

(B) No casual correction, routine change, supervision or direction of the working force shall be considered a grievance unless the application of such matter creates a grievance.

(C) Grievance Meeting: The Mill Superintendent shall meet the General Shop Committee at least twice each month on scheduled days which may be changed by mutual consent but which are hereby tentatively set for the second and fourth Thursday of each month at 2:00 p.m., and at such other times as may be necessary [fol. 23] to adjust grievances at a time convenient to both parties. The Employer's Representative of executive management shall meet with the Union's Representative and the General Shop Committee at least once each month, on regularly scheduled days which may be changed by mutual consent but which are hereby tentatively set for the second Tuesday of each month at 2:00 p.m.

(D) Conciliation: Either party to this Agreement may, prior to a demand for arbitration as herein provided and provided the other party has not less than five (5) days' written notice thereof request the Federal Mediation and Conciliation Service to send a Commissioner of Conciliation Service and/or Technicians to assist in a settlement

of the issues. In the event such a request is made, the right of arbitration shall be postponed until the conciliation has become effective or until either party hereto may elect to refer the matter to arbitration and so indicates in writing to the other party.

Article IX

Strikes and Lockouts—Arbitration

(A) The Employer and the Union agree that the grievance procedures provided herein are adequate to provide a fair and final determination of all grievances, subject to the grievance procedures provided herein, arising under the terms of this contract.

It is the desire of the Union and the Employer to avoid strikes and work stoppages.

(B) If, as a result of the failure of an employee to exhaust all grievance procedures available under the con- [fol. 24] tract, a work stoppage, intentional slow-down of production, or strike occur, such employees who participate may be disciplined or discharged. However, disciplinary action shall be taken promptly against such employee, in no event subsequent to thirty (30) days from the time the action complained of occurred. The term "intentional slow-down of production" shall mean a condition of willful restriction or reduction of production by any employee which is within such employee's reasonable control.

(C) During any period in which any employees are engaged in any work stoppage, strike, or intentional slow-down of production before all available settlement procedures provided in the contract have been exhausted, the Employer will not be required to bargain with representatives of the Union with respect to any employees engaged in such work stoppage, strike or intentional slow-down.

(D) (1) In any case where a work stoppage or strike occurs because of a grievance which is arbitrable under the contract, or occurs without all available grievance procedures having been exhausted the Union shall promptly, upon notification by letter or telegram from the Employer, to the Union's Southern Director, Charlotte, N. C. with a copy to the Union's General Office at New York, New York,

issue a written statement directed to its members, with a copy to the Employer to use as it desires, as follows:

You are advised that a (stoppage of work) (strike) (intentional slow-down of production) occurred ..... in the ..... Department at the Lincoln Mills of Alabama. This action was unauthorized by the Textile Workers Union of America.

[fol. 25] "You are directed to promptly return to your respective jobs and to cease any action which may adversely affect production you are directed to discontinue and disregard any picket line which may exist in the plant.

"The grievance (S) in dispute will be processed through the regular grievance procedures provided for in your contract."

It is agreed that an authorized officer of the Local Union and/or an authorized officer of the International Union shall sign the notice above referred to.

(2) Upon notification given the Union by the Employer the action referred to in the preceding paragraph has not brought about a termenation of such work stoppage, strike, or intentional slow-down of production the Union will take such further steps as it, in its discretion, considers reasonable and appropriate under the circumstances to bring about compliance with the notice referred to in paragraph (1) above.

(E) The Employer agrees that in consideration of the performance by the Union of the undertakings herein assumed by it in Paragraph (D) hereof with respect to the termination of unauthorized strikes and work stoppages, there shall be no liability by suit for damages on the part of the Union, its officers, agents or members, for breach of contract of any kind or character whatsoever.

(F) Any disagreement or dispute between the Union and the Employer, arising from the operation or interpretation of this Agreement which pertains to wages, rates of pay, hours of work or other conditions of employment, which has not been satisfactorily adjusted within the [fol. 26] fifteen (15) days referred to in Step No. 4, Article VIII, or within the ten (10) days referred to in Article III, whichever applies to the disagreement or dispute and is

otherwise timely as provided in this Agreement, may be submitted to arbitration by either party giving written notice within ten days after the expiration of the applicable time limit referred to above. Failure to give such written notice will constitute an abandonment of the disagreement or dispute.

Within ten (10) working days after receipt of written notice of demand for arbitration sent by either party to the other, the parties shall confer and endeavor to agree upon the selection of an arbitrator. Should they be unable to agree, within three days of the date of the meeting, then the parties, or either of them, may request the American Arbitration Association to submit to them jointly a list of five qualified arbitrators, from which the parties shall select an impartial arbitrator by alternately striking one name each from the list until one name remains. If the issues in dispute involve the determination of work loads or work assignments and/or the setting of piece rates in connection therewith, the American Arbitration Association shall be requested to include on its list qualified textile technicians or persons who by prior experience and training are qualified to arbitrate and decide the issue in dispute. The list submitted shall specify the experience and training of the persons named on the list, and any person without experience and training shall not be considered as having been nominated, and a new name or names may be requested in lieu thereof.

Except as provided above, the rules, regulations, and procedures of the American Arbitration Association shall be applicable.

[fols. 27-48] The expenses of the impartial arbitrator shall be shared equally by the parties.

It is understood and agreed that the arbitrator shall have no right to make changes in the terms and provisions of this Agreement.

Exceptions: Notwithstanding anything in this Agreement to the contrary, it is agreed that disputes with respect to general wage revisions shall not be subject to arbitration.

[fol. 49]

Article XVI

Termination

This Agreement shall continue in full force and effect until midnight July 3, 1954, and for one year terms there-
[fols. 50-51] after unless written notice of termination shall be mailed by either party to the other at least sixty (60) days prior to the end of the then current term, in which event this Agreement shall terminate at the end of the then current term. Such notice shall be sent by Registered Mail to the Employer at Huntsville, Alabama, or the Textile Workers Union of America, CIO, 731 Frank Nelson Building, Birmingham, Alabama, as the case may be, and if served by the Employer, copy of said notice shall also be sent by Registered Mail to the President of the Textile Workers Union of America, Local Union No. 230, at Huntsville, Alabama.

In Witness Whereof, the parties hereto, by their duly authorized representatives, have set their hands and seals as of the day and year first above written.

Lincoln Mills of Alabama, By J. W. O'Neal, General Superintendent.

Textile Workers Union of America, CIO, By C. D. Boartfield.

Attest: W. M. Painter.

Ratified and approved by Local No. 230, T. W. U. A.: L. B. Johnson, J. C. Wilbourn, F. J. Petty.

[fol. 52]

Exhibit "C" to Exhibit "A"

Statement—Downtime Practice

The following is a brief statement as to the practice prevailing during 1947-1948 in handling downtime for piece rate employees.

1. All downtime allowances were approved by the Superintendent with the assistance of the General Superintendent where questionable.

2. Each instance involving downtime was handled separately and on the merits of the particular case, taking into consideration what part of job affected, and adjustments were made on daily or weekly basis depending on job affected.

3. All major items were approved, but no consideration was given to minor items.

4. Where agreement or procedure, such as 30 minutes on slubbers and frames had been made, same prevailed. The old procedure in Weave Room where looms had to stand 24 hours before any allowance was made was discontinued and instead each instance was handled on its merit considering all circumstances.

5. In making allowances, the basis of the allowance was the production factor for the job involved; as an example—90% on Mod. D. Looms.

[fol. 53] EXHIBIT "B"

Complaint

June 23, 1954.

Cloth Rollers—All Shifts

According to notice date April 6, 1954, Cloth Rollers assignment would be 134 looms where doffing cloth from looms and according to notice date June 5, 1954, Cloth haulers will have their present duties amended to the extent of being required to take off cloth on their assigned looms (same duties as these assigned to cloth haulers presently taking off cloth) and as necessary additional cloth haulers would be assigned in accordance with the running schedule of the plant. The Union contends that the last notice is not being abided by. The Union is requesting that the first notice of the assignment of the jobs to equal said notices.

Chas. Lefty, F. J. Petty, J. D. Brooks.

July 22, 1954.

We do not know of any failure on our part to abide by the job change notice as stated in the complaint. If the

Union will point out what violations was made we will be glad to make every effort to correct same.

August 16, 1965.

This complaint is considered closed, it being understood that the present job of cloth haulers is *de*t up on the basis of 139 looms per job.

[fol. 54] EXHIBIT C

Textile Workers Union of America
Affiliate of the C. I. O.:

Grievance Report

Date.—June 23, 1954.

Local No. 230

Name of Member—Card Grinders Helpers All Shifts
Mill.—Lincoln Mills of Alabama

Dept.—Carding

Nature of Grievance. On Monday, May 24, 1954 the Company changed the Card grinders Helpers duties. The added duties have been increased to the extent that they can not get their proper fatigue and personal time. The Union is asking that the new duties be reduced back to the prior work assignment before the jobs were increased and that they be paid for all added duties they have performed.

Committee Signature, (S.) Chas. Lefty, F. J. Petty, J. D. Brooks.

Union Copy

(Reverse side of Grievance Report Form)

Step No. 3

July 23, 1954.

Answer: The Card Grinder Helper jobs were changed to provide for blowing down overhead each shift in the

[fol. 55] Card room. This new duty was an addition to their present duties but was not such a burden that it denied the Grinder Helpers of their fatigue and personal time. Our observation of the job since the change has not shown us a basis for the contention that the job is unreasonable.

Signed R. F. Day, Superintendent.

EXHIBIT "D"

Textile Workers Union of America
Affiliate of the C. I. O.

Grievance Report.

Date.—June 23, 1954.

Local No. 230.

Name of Member.—Slubber Hands #234 Card Room All Shifts.

Mill Lincoln

Dept.—Carding.

Nature of Grievance.—On May 24, 1954 the Company added to the Slubber Tenders also J-3 hands the added work or duties of turning cans, piecing creels cans to their assignment. The Union is therefore asking that the Slubber hands and J-3 hands jobs be restored back to their normal duties prior to May 24, 1954, with pay for the extra duties they have performed. Prior to this date the Slubber hands jobs were increased due to increased speed of the machines [fol. 56] of twenty-five turns per minute.

Committee Signature, (S.) Chas F. Lefty, F. J. Petty, J. D. Brooks.

Union Copy—

(Reverse side of Grievance Report Form)

Step No. 3

July 22, 1954.

Answer: We find no basis for the request as stated in the complaint since the performance of the job has indicated it is operating satisfactorily and the work assignment is not out of line with other mills on our type goods.

We are not aware of any speed change on slubbers as indicated in the complaint. The speed is dept on standard by periodic adjustments, but no increase has been made in speed.

Signed R. F. Day, Superintendent.

[fol. 57] EXHIBIT "E"

Textile Workers Union of America
Affiliate of the C. I. O.

Grievance Report.

Date—June 23, 1954.

Local No. 230.

Name of Member—Sweepers all shifts.
Mill Lincoln

Dept.—No. 2 and No. 4 Carding.

Nature of Grievance.—On May 24, 1954 the Company added new duties to the sweepers of making Roving on Slubbers and "J" 3s. Prior to May 24, 1954 the Company had increased the duties of these people to the extent that it was already a full workload, the Union is therefore requesting that the Company restore these employees to their former jobs as they were on prior to May 24, 1954, with pay for the extra work they have been doing since May 24, 1954.

Committee Signature, (S:) Chas. F. Lefty, F. J. Petty, J. D. Brooks.

Union Copy—

(Reverse side of Grievance Report Form.)

Step No. 3

July 15, 1954.

Answer: The performance of the job during the trial period has indicated that the duties of the Sweepers are [fol. 58] fair and reasonable. We changed duties of the Sweepers in order to allow for more use of the productive time of Sweepers so that our card room operation would be more normal and practical. This action was necessary if we are to get our operations in line with present modern-day operations of competing mills.

Signed R. F. Day, Superintendent.

EXHIBIT "F"

Textile Workers Union of America
Grievance Report

June 23, 1954.

Local No. 230.

Name of Member—Transfer Man All Shifts Carding.
Mill Lincoln
Dept.—Carding

Nature of Grievance.—On May 24, 1954 the Company added to the Slubber Tenders also J-3 hands the added work or duties of turning cans, piecing creels cans to their assignment. The Union is therefore asking that the Slubber hands and J-3 hands jobs be restored back to their normal duties prior to May 24, 1954, with pay for the extra duties they have performed. Prior to this date the Slubber hands jobs were increased due to increased speed of the machines of twenty-five turns per minute.

Committee Signature, (S.) Chas. F. Lefty, J. D. Brooks.

Union Copy—

[fol. 59] (Reverse side of Grievance Report Form)

Step No. 3

July 15, 1954.

Answer: We can find no basis for the request of the Union as stated in this complaint other than that new duties were added to the duties of the Transfer men.

We find that the job has a reasonable amount of duties, as has been proven by the performance of the job during the trial period, and since the trial period. We therefore can not restore the job back to its former status as there is no basis for doing that.

Signed R. F. Day, Superintendent.

EXHIBIT "G"

Textile Workers Union of America
Affiliate of the C. I. O.

Grievance Report

Date.—June 23, 1954.

Local No. 230.

Name of Member.—Can Dumper & Roving Marker.
Mill Lincoln Mills

Dept.—Carding All Shifts.

Nature of Grievance.—On May 24, 1954 the Company discontinued the job of can dumping (Roving Marker). [fol. 60] The Union is therefore asking that the Company reinstitute this job.

Committee Signature, (S.) Chas. F. Lefty, F. J. Petty, J. D. Brooks.

Union Copy—

(Reverse side of Grievance Report Form)

Step No. 3

July 15, 1954.

Answer: The complaint is asking that we reinstitute the Roving Marker job because we discontinued it. We can see no basis in changing the job for that reason. However,

upon checking the job we feel that the duties as now laid out are in line and can see no reason for granting the request of the complaint.

Signed R. F. Day, Superintendent.

[fol. 61] EXHIBIT H

Textile Workers Union of America
Affiliate of the C. I. O.

Grievance Report

Date.—June 23, 1954.

Local No. 230.

Name of Member.—Frame Fixers all Shifts.
Mill Lincoln Mills.

Dept.—All Shifts Carding.

Nature of Grievances.—On May 24, 1954 the Company added the extra duty of blowing down over-head each shift from Drawing Frames to the Spinning Frames, therefore the Union is asking that these employees be relieved of this extra duty immediately.

Committee Signature, (S.) Chas. F. Lefty, F. J. Petty, J. D. Brooks.

Union Copy—

(Reverse side of Grievance Report Form)

Step No. 3

July 22, 1954.

Answer: There is no reason given in the complaint for granting the request made in the complaint except that [fol. 62] since an extra duty was added it should immediately be taken off.

The Frame Fixers have an assignment that is well within the bounds of being fair and reasonable. We can find no basis for changing the jobs as requested.

Signed R. F. Day, Superintendent.

EXHIBIT "I"

Textile Workers Union of America
Affiliate of the C. I. O.

Grievance Report

Date.—June 24, 1954.

Local No. 230.

Name of Member.—False & Jenks Twister tenders and Doffers.

Mill Lincoln.

Dept.—Twisting.

Nature of Grievance.—The assignments of the above jobs were changed on May 19, 1954, from five frames to 7½ frames. This job being completely out of line for a reasonable work assignment due to the increased number of frames to tend. The Twister tending can not run the job even without any fatigue time being taken. There-
[fol. 63] fore the Union is asking that the assignment of these jobs be restored as they were prior to May 19, 1954.

Committee Signature, (S.) Chas. F. Lefty, J. D. Brooks.

Union Copy—

(Reverse side of Grievance Report Form)

Step No. 3

July 22, 1954.

Answer: The performance of the job during the trial period has indicated the job is fair and reasonable. The job assignment was changed in order to provide for more use of the productive time of employees involved.

We can find no basis for the job being out of line as stated in the complaint and therefore can not restore the job to its status before the change.

Signed R. F. Day, Superintendent.

[fol. 64] EXHIBIT "J"

Textile Workers Union of America
Affiliate of the C. I. O.

Grievance Report

Date.—June 24, 1945.

Local No. 230.

Name of Member.—Warp Twister Creeler Hands all shifts.

Mill Lincoln.

Nature of Grievance.—On May 19, 1954. The Twister creeler Hands were reduced from four (4) to three (3) and the three remaining were to perform the work formerly done by the four, the three hands left on the assignment are not able to perform the work properly in the allotted time. The Union is, therefore, requesting that the work assignment for the Twister Creeler Hands be restored to what it was prior to May 19, 1954.

Committee Signature, (S.) Chas. F. Lefty, F. J. Petty, J. D. Brooks.

(Reverse side of Grievance Report Form)

Step No. 3

July 14, 1954.

Answer: The warp twister creeler jobs have been performed properly within the allotted time as evidenced by [fol. 65] the performances of the job during the trial period. We can see no basis for changing job assignment as requested since the job is not unreasonable.

We have made this job change in order to have an efficient and practical mill operation so that we may be in a position to compete with other mills in our same business.

Signed R. F. Day, Superintendent.

EXHIBIT K

Textile Workers Union of America
Grievance Report

June 24, 1954.

Local No. 230.

Name of Member.—Warp Twister Doffers.
Mill Lincoln.
Dept.,—Twisting.

Nature of Grievance.—On May 19, 1954, the Twister tender doffers on the Whiting H. & Bs Lowells and Saco-Lowells were given another twister from. The Twister tender hands can not run this many frames and do the required duties that is required of this job and get their proper fatigue and personal allowance time. If heavier yarns are put on those frames it would be impossible to do their duties much less get their fatigue and per-
[fols. 66-67] sonal time; therefore the Union is requesting that the jobs be restored back to their original assignments.

Committee Signature, (S.) Chas. F. Lefty, F. J. Petty, J. D. Brooks.

Union Copy—

(Reverse side of Grievance Report Form.)

Step No. 3

July 22, 1954.

Answer: The performance of the job during the trial period has indicated that the jobs involved are fair and reasonable. If heavier yarns are put on the frames to the extent that the job is materially affected, the Company will review the jobs in question and if some adjustment is necessary, the proper adjustment will be made. It was necessary to change these jobs to their present assignment in order to place that operation on a practical and economic basis.

Signed R. F. Day, Superintendent.

[fols. 68-69] IN UNITED STATES DISTRICT COURT

MOTION TO DISMISS COMPLAINT—Filed February 8, 1955

The defendant moves the Court as follows:

1. To dismiss the action because the complaint fails to state a claim against defendant upon which relief can be granted.

Frank A. Constangy and Bell, Morring & Richardson, By Patrick W. Richardson, Attorney for Defendant.

[fol. 70] IN UNITED STATES DISTRICT COURT

ANSWER—Filed February 8, 1955

For Answer to the Complaint herein, the Defendant shows:

1

Defendant admits the allegations of Paragraph 1 insofar as they allege that the plaintiff Labor Union is an unincorporated association and insofar as they allege that the Defendant is a corporation doing business in and having a place of business at Huntsville, Madison County, Alabama, within this District, and insofar as they allege that the Defendant purchases raw materials from and ships finished products to points outside the State of Alabama.

2

Defendant denies that allegations of Paragraph II of the Complaint except as hereinafter admitted.

Defendant admits that on or about June 27, 1953 it executed a written collective bargaining Agreement with the Plaintiff. Further answering the allegations of said Paragraph, Defendant shows that said contract by virtue of a notice in accordance with Article XVI thereof, expired by its own terms on July 3, 1954; and that said contract has not been extended or renewed and that there has been no Contract or other Agreement in effect between the Plaintiff and Defendant since that time.

[fol. 71] Defendant further shows that the Contract attached as Exhibit A to the Complaint is incomplete and does not reflect the entire agreement between the Plaintiff and the Defendant which was executed on June 27, 1953 and expired on July 3, 1954. Defendant attaches hereto, as Exhibit A to this Answer, a copy of the complete Agreement which was in effect during the periods above mentioned.

3

Defendant denies that allegations of Paragraph II of the Complaint except as hereinafter admitted.

Defendant shows that the grievances attached to the Complaint, as Exhibits B through K, were filed with it in writing on June 25, 1954; that no further action occurred on said grievances between the date of the expiration of the Contract under which they were filed. Defendant shows that no demand for arbitration was made on these grievances during the life of said Agreement. Defendant further shows that as of the time the demand for arbitration of the alleged grievances was made there was no written or oral agreement or contract between the Plaintiff and the Defendant wherein the Defendant agreed to or committed itself to arbitrate these or any other grievances or complaints filed by the Plaintiff.

Defendant further shows that its refusal to arbitrate the alleged grievances did not occur until the demand for arbitration was made and that such demand for arbitration was made after the expiration of the Agreement upon which the demand was purportedly based.

[fol. 72]

4

Defendant denies the allegations of paragraph IV of the Complaint.

5

Answering Paragraph V of the Complaint, Defendant denies each and every allegation of said Paragraph and shows it has not failed or refused to perform its obligations under Article IX (f) of any other Section of the Agreement of June 27, 1953 at any time when said Agreement was in effect; that the alleged breach complained of

in the said Complaint is an allegation of a breach of an Agreement which, according to the Complaint, occurred after the Agreement itself had expired and was not in effect.

Wherefore, Defendant prays that the said Complaint be dismissed.

Respectfully submitted, Frank A. Constangy, and Bell, Morring & Richardson, By Patrick W. Richardson, Attorneys for Defendant, Lincoln Mills of Alabama, 610-14 State National Bank Building, Huntsville, Alabama.

We hereby certify that we have served the foregoing Answer on Cooper, Mitch & Black, attorneys of record for the plaintiff, Textile Workers Union of America, CIO, [fol. 73] by depositing a copy thereof in the United States Mails, postage prepaid, addressed to said attorneys at "1329 Brown-Marx Building, Birmingham, Alabama," this 7th day of February, 1955.

Frank A. Constangy, and Bell, Morring & Richardson, By Patrick W. Richardson, Attorneys for Defendant, 610-14 State National Bank Building, Huntsville, Alabama.

NOTE RE EXHIBIT "A"

This Exhibit is heretofore set out as Exhibit "A" to the Complaint on Page 5 of this Record.

[fol. 74] IN UNITED STATES DISTRICT COURT

AGREED STATEMENT OF FACT—Filed June 30, 1955

Come now Lincoln Mills of Alabama, appellant, and Textile Workers Union of America, CIO, appellee, by their respective counsel of record, and stipulate and agree hereby that the evidence introduced by the respective parties upon the hearing of this cause at Huntsville, Alabama on March 3, 1955 consisted, in substance, of the following:

1. A stipulation of the facts by counsel for the respective parties, which stipulation, in substance, is fully and

correctly set forth in paragraphs numbered 1 through 6, inclusive, under the heading "Findings of Fact" of the judgment of the Court rendered herein on the 29th day of April, 1955; and

2. A printed pamphlet containing a collective bargaining agreement entered into the 27th day of June, 1953 by and between the parties; and

3. Ten grievances, seven of which were filed by the appellee with the appellant on June 23, 1954 and three of which were filed by the appellee with the appellant on June 24, 1954.

The said collective bargaining agreement and grievances being exhibited with the appellee's original complaint in this cause and identified as Exhibits A through K, inclusive, to said complaint and being the same collective bargaining agreement and the same grievances referred [fols. 75-76] to in paragraphs numbered 2 and 3 of the aforesaid "Findings of Fact" set forth in the judgment of the Court entered the 29th day of April, 1955, the said pamphlet copy of said collective bargaining agreement and the said ten grievances, including the indorsement of the appellant's respective actions thereon upon the reverse thereof, being introduced and accepted in evidence in their entirety, respectively.

4. That the foregoing constitutes all of the evidence introduced by the parties at the aforesaid hearing in this cause held on the 3rd day of March, 1955.

Frank A. Constangy, and Bell, Morring & Richardson, By Patrick W. Richardson, Attorneys for Lincoln Mills of Alabama, Appellant. 610-14 State National Bank Building, Huntsville, Alabama.

Benjamin Wyle, and Cooper, Mitch & Black, By Jerome A. Cooper, Attorneys for Textile Workers Union of America, CIO, Appellee, 1329 Brown-Marx Building, Birmingham, Alabama.

[fol. 77] IN UNITED STATES DISTRICT COURT

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT—
Filed April 29, 1955

[Title omitted]

This cause, coming on to be heard before the Court without the intention of a jury, was submitted to the Court, with disposition of defendant's motion to dismiss reserved, on the 3rd day of March, 1955, upon evidence introduced by plaintiff and defendant and their stipulations. After oral arguments, and submission of briefs of both parties, this cause was taken under advisement by the Court. On this 29 day of April, 1955, the Court, after a full and careful consideration of the evidence and of the oral arguments and briefs, makes and enters the following findings of fact, conclusions of law, and judgment:

Findings of Fact

1. The Textile Workers Union of America, CIO, an unincorporated association (hereinafter referred to as "plaintiff") plaintiff herein, is and was during the time here involved an unincorporated association and labor organization as defined by the provisions of the Labor Management Relations Act of 1947. The Lincoln Mills of Alabama (hereinafter referred to as "defendant") is and was during the time here involved a corporation [fol. 78] owning and operating a textile mill in Huntsville, Alabama. During the time here involved, the defendant in the operation of its mill has engaged, and now engages, in an industry affecting commerce as defined by the provisions of the Labor Relations Act of 1947, and defendant and its employees were and are subject to the provisions of the said Act.

2. On or about June 27, 1953, the defendant executed a written collective bargaining agreement with the plaintiff. This collective bargaining agreement provided, in Article VIII thereof for the adjustment of "any grievance arising from the operation or interpretation of this agreement which pertains to wages, rates of pay, hours of work or

other conditions of employment" by utilization of the contract's grievance procedure, culminating, as its final step, in arbitration. Article IX (F) of that agreement provided that "the parties shall confer and endeavor to agree upon the selection of an arbitrator. Should they be unable to agree within three days of the date of the meeting, then the parties or either of them, may request the American Arbitration Association to submit to them jointly a list of five qualified arbitrators from which the parties shall select an impartial arbitrator by alternately striking one name each from the list until one name remains."

3. On June 23, 1954, seven grievances were duly signed by individual employees and filed with the defendant, as employer, by the plaintiff. On June 24, 1954, three additional such grievances were duly signed and filed with the defendant.

4. The above collective bargaining agreement expired July 3, 1954.

[fol. 79] 5. The above grievances were not granted and were denied by defendant in the Third Step of the grievance procedure. One was denied on July 14, 1954; three, on July 15, 1954; and six, on July 22, 1954.

6. Although duly requested to do so, defendant refused to submit these unresolved grievances to arbitration as provided in paragraph IX (F) of the Agreement.

Conclusions of Law

1. The Court has jurisdiction of the parties and of the cause of action by virtue of the provisions of Section 301 of the Labor Management Relations Act of 1947.

See, Association of Employees v. Westinghouse Corp., 210 F. (2d) 623, at 628, affirmed March 28, 1955, U. S. Rock Drilling, Blasting, etc. v. Mason Hanger Co. Inc., 217 F. (2d) 687, cert. den. U. S. (April 25, 1955).

2. Plaintiff has a right to bring and maintain this action to compel arbitration by virtue of the provisions of Section 301.

Evening Star v. Columbia Typographical Union, 124 F. Supp. 322, Wilson Bros. v. Textile Workers Union, USDC SD New York, F. Supp., December 15, 1954. TWUA

v. American Thread Co., D. C. Mass., 113 F. Supp. 137.

Plaintiff's remedy, and the substantive rights that plaintiff relies upon, are created by this Federal Act.

Shirley-Herman Co. v. Int'l Hod Carriers, 182 F. (2d) 806.

[fol. 80] 3. Since the grievances in question arose from the operation or interpretation of the collective bargaining agreement and while it was in effect, the expiration of that agreement thereafter does not relieve defendant of its contractual obligation to arbitrate. Actually, defendant seems to have considered the grievances in question, in the Third Step of the grievance procedure, after that expiration date had occurred. In any event, defendant is obligated under the collective bargaining contract in question to arbitrate grievances which duly arose and were instituted prior to the contract's termination date. Claim respecting matters that arise during a contract's term obviously often cannot be disposed of within that period of time.

Lane v. Endicott Johnson, 299 N. Y. 725, 87 NE 2d 450.

In re Commercial Telegrapher's Union, 123 N. Y. S. 2d 259.

Columbia Casualty v. Drivers and Chaffeurs Union, 107 N. Y. S. 2d 90.

Cf. e. g. Nulisundis Shipping Co. v. Amtog Trading Corp., 125 F. (2d) 978 (CCA 2) RFC v. Hanison's & Crossfield, 204 F. (2d) 366 (CCA 2) cert. den. 346 U. S. 854.

Wilson Bros. vs. Textile Workers Union, supra.

4. Plaintiff is entitled to have the grievance in question, which are Exhibits B through K to the complaint, promptly submitted to arbitration for final determination in accordance with and as provided by Article IX (F) of the above collective bargaining agreement, which is Exhibit A to the complaint.

5. Plaintiff has not proven and is not entitled to recover damages against defendant.

[fol. 81] 6. Plaintiff is entitled to an order requiring defendant to submit the grievances referred to herein and as set out in the complaint to arbitration for binding de-

termination in accordance with Article IX (F) of the above Agreement.

IN UNITED STATES DISTRICT COURT

JUDGMENT—April 29, 1955

Upon the basis of the foregoing it is hereby Ordered, Adjudged and Decreed by the Court:

1. That the defendant promptly perform and comply with Article IX(F) of said contract with respect to said unresolved grievances which are Exhibits B through K to the complaint;

2. That defendant be and same hereby is restrained from in any manner failing or refusing to perform or comply with its contractual obligations under said Article IX (F) with respect to said grievances;

3. That the defendant promptly submit said unresolved grievances to arbitration and take the necessary steps to that end, as provided in said Article IX (F).

It is further Ordered, Adjudged and Decreed that defendant's motion to dismiss be, and the same hereby is, denied; that plaintiff is not entitled to incidental monetary damages, and that the costs of this suit be and they are hereby taxed against the defendant, for which let execution issue.

This 29 day of April, 1955.

H. H. Grooms, United States District Judge.

[fol. 82] MOTION TO AMEND JUDGMENT—Filed May 9, 1955

The defendant moves the Court to amend its judgment or decree entered in this cause on April 29, 1955 by vacating and setting same aside and entering, in lieu thereof, a judgment for the defendant or, if the defendant be not entitled to such relief, then defendant moves the Court, in the alternative, to set aside and vacate said judgment or decree and grant unto the defendant a new trial or re-hearing in this cause and, as grounds for said motion, the defendant assigns the following:

1. Said judgment is contrary to the facts in the case.

2. Said judgment is contrary to the evidence in the case.

3. Said judgment is contrary to the great weight of the evidence in the case.

4. Said judgment is contrary to the law in the case.

5. That, under the undisputed facts and evidence in the case, the defendant is now and was at the time the plaintiff demanded the arbitration in issue and at the time the defendant denied the plaintiff's grievances upon which such arbitration was demanded and is sought in this case under no contractual or other obligation to the plaintiff or to any member of the plaintiff union with respect to the matters complained of in said grievances.

6. That the undisputed evidence shows that the plaintiff's grievances upon which compulsory arbitration is sought in this cause all relate to work loads and duty [fol. 83] assignments of certain of the defendant's employees who are members of the plaintiff union; that the defendant's contractual agreement with the plaintiff was terminated prior to the plaintiff's right to and demand for arbitration on said grievances and that, therefore, the plaintiff, no longer had at the time of its demand for arbitration, nor does it now have, any right to require of the defendant anything with respect to the subject matter of said grievances.

7. That the plaintiff, since the termination of its agreement with the defendant, no longer has any right to require of the defendant the action demanded by its grievances upon which compulsory arbitration is sought in this cause, wherefore, the question sought to be arbitrated is now moot, all of which appears from the evidence, without contradiction.

8. That the plaintiff's agreement with the defendant was terminated on July 3, 1954, as appears from the evidence, and that the plaintiff has not, since said date, been entitled to any of the relief sought by its grievances, by arbitration or otherwise, it appearing from the evidence that said grievances relate solely to work assignments, which the defendant has been free to make or change as it sees fit since the said termination of said agreement with the plaintiff.

9. That it appears without dispute in the evidence that, since July 3, 1954, the arbitration sought by the plaintiff would be fruitless, futile and a nullity for the reason that the defendant has been free, since said date, to act as it choses with respects to the matters sought to be arbitrated and would, therefore, be under no obligation now [fol. 84] to respect or conform to any award of the arbitration which the plaintiff seeks.

Frank A. Constangy, and Bell, Morring & Richardson, By Patrick W. Richardson, Attorneys for Defendant, 610-14 State National Bank Building, Huntsville, Alabama.

* * * * * * *

[fol. 85] AMENDMENT TO MOTION TO AMEND JUDGMENT—Filed May 10, 1955

The defendant moves the Court to amend the motion heretofore filed in this cause on the 6th day of May, 1955, moving the Court to amend its judgment or decree entered in this cause on April 29, 1955 by vacating and setting same aside and entering in lieu thereof a judgment for the defendant or if the defendant is not entitled to such relief then defendant moves the Court in the alternative to set aside and vacate said judgment or decree and grant unto the defendant a new trial or rehearing in this cause; and as additional grounds for said motion the defendant assigns the following:

[fols. 86-87] 10. That the Court is without jurisdiction to grant the relief decreed in this cause.

11. That said judgment is contrary to the law in that the decree sought to confer substantive rights in Conclusion of law Number 2, second paragraph, in said decree under Section 301 of the National Labor Relations Act, which said Section is procedural only and confers no substantive rights.

Frank A. Constangy, and Bell, Morring & Richardson, By Robert K. Bell, Attorneys for Defendant,

610-14 State National Bank Building, Huntsville, Alabama.

5-20-55.

Amendment to Motion granted.

H. H. Grooms, Judge.

[fol. 88] In United States District Court

Order Overruling Defendant's Motion to Amend Judgment, etc.—Filed May 23, 1955

This cause, coming on to be heard on the 20th day of May, 1955, was submitted to the Court on the amended motion of the defendant to amend the judgment or decree entered in this cause on April 29, 1955, by vacating and setting aside the same and entering in lieu thereof a judgment for the defendant, or in the alternative to vacate said judgment and grant the defendant a new trial or a hearing in this cause. After consideration of the defendant's said motion, as amended, oral argument of counsel for the respective parties, and additional authorities submitted to the Court, the Court is of the opinion said motion, as amended, should be denied:

It is, therefore, for good cause shown, Ordered, Adjudged and Decreed by the Court that the defendant's said motion, as amended, be and the same is hereby overruled and denied.

Done and ordered, this the 23rd day of May, 1955.

H. H. Grooms, Judge.

[fol. 89] In United States District Court

Notice of Appeal—Filed May 26, 1955

[Title omitted]

Notice is hereby given that Lincoln Mills of Alabama, a corporation, defendant above named, hereby appeals to the United States Circuit Court of Appeals for the

Fifth Circuit from the final judgment entered in this action on the 29th day of April, 1955.

(S.) Frank A. Constangy, and Bell, Morring & Richardson, By Patrick W. Richardson, Attorneys for Appellant, Lincoln Mills of Alabama, a Corporation.

[fol. 90] IN UNITED STATES DISTRICT COURT

MOTION FOR SUPERSEDEAS—Filed May 26, 1955

Comes now Lincoln Mills of Alabama, a corporation, defendant in the above action, and moves the Court to order a suspension of the injunction awarded to the plaintiff by the Court's judgment entered in said action the 29th day of April, 1955, pending said defendant's appeal from said judgment heretofore taken to the United States Court of Appeals for the Fifth Circuit, upon the said defendant entering into bond, with sufficient sureties and conditions according to law and in such sum and upon such other conditions as the Court shall consider proper for the security of the rights of the plaintiff; and, as grounds for said motion, the defendant says:

1. That the defendant will suffer irreparable injury in the loss of time of its officers, agents and employees and expenses to be incurred by the defendant in a submission to arbitration as ordered by the Court's said judgment, in the event that the said judgment is reversed upon the defendant's said appeal therefrom.

2. That the defendant will suffer irreparable injuries in complying with the injunction decreed by the Court's final judgment, in the event said judgment is reversed on the defendant's said appeal therefrom.

3. That the defendant will suffer irreparable injuries in complying with the award of the arbitration to which it is ordered to submit by the Court's said judgment, if the [fol. 91] award is adverse to the defendant's position heretofore taken upon the issues ordered to be submitted,

in the event that the Court's said final judgment is reversed on the defendant's said appeal therefrom.

Frank A. Constangy, and Bell, Morring & Richardson, By Patrick W. Richardson, Attorneys for Defendant.

* * * * * * *

[fol. 92] In United States District Court

Order Granting Supersedeas, etc.—Filed June 13, 1955

This cause, coming on to be heard, was submitted on the motion of the defendant for an order suspending the permanent injunction heretofore granted by this Court in its final judgment entered in this cause on April 29, 1955, during the pendency of an appeal taken from said judgment; and it appearing to the Court that the defendant's said motion is well taken:

It is, therefore Ordered, Adjudged and Decreed by the Court that the defendant's said motion is granted and a suspension and supersedeas of said injunction granted in the judgment of April 29, 1955, are hereby allowed, conditioned upon the defendant giving a bond in the sum of $1,000, with sufficient sureties, and further conditioned that said bond be made payable to the plaintiff, or its successor, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been harmed by the granting of this motion [fol. 93] for supersedeas, if this cause is affirmed on appeal; otherwise said bond to be null and void.

Done and ordered, this the 9 day of June, 1955.

H. H. Grooms, Judge.

In United States District Court

Supersedeas Bond—Filed June 20, 1955

We the undersigned jointly and severally acknowledge that we and our personal representatives are jointly bound

to pay to Textile Workers Union of America, CIO, plaintiff, the sum of $1,000.00.

The condition of this bond is that whereas the defendant has appealed to the Court of Appeals for the Fifth Circuit from the judgment of this Court, entered April 29, 1955, if this defendant shall pay the amount of that final judgment herein if his appeal shall be dismissed or the judgment affirmed or modified together with all costs that may be awarded, then this bond is void, otherwise to be and remain in full force and effect.

Lincoln Mills of Alabama, Huntsville, Alabama, By (S.) William A. Barrell, Jr., Its Treasurer.

Attest:

(S.) J. W. O'Neal, Its Secretary.

[fols. 94-96] Above bond with $1,000.00 cash surety thereon approved this 20th day of June, 1955.

H. H. Grooms, United States District Judge.

(Seal.)

[fol. 97] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 98] ARGUMENT AND SUBMISSION—October 5, 1955
(omitted in printing)

[fol. 99] IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 15697

LINCOLN MILLS OF ALABAMA, Appellant,

versus

TEXTILE WORKERS UNION OF AMERICA, CIO, Appellee

Appeal from the United States District Court for the Northern District of Alabama

OPINION—January 31, 1956

Before RIVES, JONES and BROWN, Circuit Judges.

JONES, Circuit Judge: Lincoln Mills of Alabama, the defendant below, is a corporation owning and operating a textile mill in Huntsville, Alabama. It is engaged in an industry affecting commerce and hence subject to Federal legislation relating to labor. Textile Workers Union of America, CIO, the plaintiff below, is an unincorporated association and labor organization. We will refer to the [fol. 100] parties, for brevity and clarity, as Employer and Union.

In chronological sequence, the facts from which this controversy developed were as follows:

A written collective bargaining agreement between the Union and the Employer was executed June 27, 1953, to continue until July 3, 1954, and for one-year terms thereafter unless written notice of termination should be mailed by either party to the other sixty days prior to the end of the current term, in which event the agreement would terminate at the end of the current term. Article VIII of the agreement set up procedures to be followed in the adjustment of grievances, and provided that if a grievance had not been adjusted by the Article VIII procedures within the time specified, the party presenting the grievance should be governed by the provisions of Article IX(F) of the agreement.

By Article IX of the agreement the parties agreed that

the contract grievance procedures were adequate to provide a fair and final determination of all grievances arising under the terms of the agreement. The desire of the parties to avoid strikes and work stoppages was recited. Paragraphs (A) to (E) inclusive of Article IX contained "no-strike" provisions. In Paragraph (F) of Article IX, of the agreement it was provided that any disagreement or dispute, arising from the operation or interpretation of the agreement, pertaining to wages, rates of pay, hours of work or other conditions of employment which had not been satisfactorily adjusted within the time limited, might be submitted to arbitration by the giving of writ-[fol. 101] ten notice within ten days after the expiration of the applicable time limit. It was further provided that if the parties did not agree upon an arbitrator, the American Arbitration Association should be requested to furnish the names of five qualified arbitrators and the parties should alternately strike one name each from the list until a single name remained and the person so designated should serve.

The Union filed with the Employer seven grievances on June 23, 1954, and three grievances on June 24, 1954, all of which were of the type specified in Article IX(F). The Employer followed the procedures of the agreement up to the point of rejecting the claims, the rejections being made at various dates on and subsequent to July 14, 1954. Pursuant to timely notice given pursuant to its terms, the agreement terminated on July 3, 1954. The Union requested the Employer to submit the grievances to arbitration pursuant to Article IX(F) of the agreement. The Employer refused to do so. Thereafter the Union brought this suit against the Employer asking that the Employer be required to submit the grievances to arbitration and praying for damages. The District Court declined to award damages to the Union, saying that none were proven, but decreed that the Employer submit the grievances to arbitration as provided in Article IX(F) of the agreement. Jurisdiction was found under §301 of the Labor Management Relations Act of 1947, 29 U.S.C.A. §185.

Presented for our consideration are questions which

may be substantive as well as procedural. Since there is no diversity of citizenship apparent we are, at the [fol. 102] outset, required to ascertain whether there is a basis for Federal jurisdiction. The Congress has provided that:

> "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce . . . may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties". Sec. 301(a) Labor Management Relations Act of 1947, 29 U.S.C.A. §185(a).

This grant has given Federal courts jurisdiction for the consideration and determination of questions such as the one presented in this case. It has given to Federal courts the power to adjudicate, where a violation of a contract is asserted, causes of action between employers and labor organizations and to determine whether or not a cause of action exists in a particular case. It does not follow, though, from the existence of the judicial power to determine a cause of action or controversy that the right asserted has legal sanction. It does not follow from the grant of jurisdiction to hear a litigant in a Federal forum that rights have been created or remedies provided which are denied to others. That there is a right to seek relief in a Federal court does not mean that the relief sought is necessarily available. More specifically, our question is whether Section 301, taken in context, requires or permits the enforcement of an executory covenant for the submission to arbitration of grievances pursuant to a collective bargaining agreement between a union and an employer.

[fol. 103] The provisions of the contract between the parties to this appeal from which spring the problems presented are not novel, yet we do not find that the precise point presented has heretofore been considered by an appellate court. In the absence of statute it is the general rule that executory contracts to submit disputes to arbitration will not be specifically enforced. *Red Cross Line* v.

Atlantic Fruit Co., 1924, 264 U. S. 109, 44 S. Ct. 274, 68 L. Ed. 582. *Tejas Development Co.* v. *McGough Bros.*, 5th Cir. 1947, 165 F. 2d 276. Such is the rule as found by the framers of the Restatement of the Law. Restatement, Contracts, §550 (1932). The Supreme Court of Alabama, announcing the rule, has said:

> "'The Courts are almost unanimous in declaring that equity will not decree specific performance of a contract to submit a cause to arbitration, while it will, in proper cases, entertain a bill to enforce an award.'' Ex parte Birmingham Fire Ins. Co. 1937, 223 Ala. 370, 172 So. 99.

If there be a right to specific performance of an arbitration provision in a collective bargaining agreement we must find it in an act of Congress. The Norris-LaGuardia Act, 29 U. S. C. A. §§101, et seq., does not preclude the granting of the relief sought. *Graham* v. *Brotherhood of Locomotive Firemen and Enginemen*, 1949, 338 U. S. 232, 70 S. Ct. 14, 94 L. Ed. 22.

The United States Arbitration Act expressly provides that nothing therein "contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." 9 U.S.C.A. §1.

[fol. 104] In Section 2 it is said:

> "A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." July 30, 1947, c. 392, §1, 61 Stat. 669. 9 U.S.C.A. §2.

Section 3 of the Arbitration Act provides:

> "If any suit or proceeding be brought in any of the courts of the United States upon any issue refer-

able to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration." 9 U.S.C.A. §3.

The Arbitration Act also provides that courts of the United States may direct arbitration in accordance with the terms of written agreements. 9 U.S.C.A. §4.

[fol. 105] The Court of Appeals of the Third Circuit has had a number of occasions to consider the application of the Arbitration Act to collective bargaining agreements, and we cannot reconcile its views as expressed in its several opinions. It first held that the stay of proceedings provisions in Section 3 of the Act applied in a class suit for unpaid over-time compensation claimed under the Fair Labor Standards Act, 29 U. S. C. A. §§201 et seq. *Donahue* v. *Susquehanna Collieries Co.*, 3rd Cir. 1943, 138 F. 2d 3, 149 A.L.R. 271. Section 1 of the Arbitration Act, containing the exclusion clause was set forth in a footnote but was not mentioned in the opinion. The Donahue case, *supra,* was followed in *Watkins* v. *Hudson Coal Co.*, 3rd Cir. 1945, 151 F. 2d 311, cert. den. 327 U. S. 777, 66 S. Ct. 522, 90 L Ed. 1005, where it was said that the exclusion clause of Section 1 was not an over-all limitation. On a second appeal of the Donahue case a stay of proceedings was directed pursuant to Section 3 until arbitration was had. *Donahue* v. *Susquehanna Collieries Co.*, 3rd Cir. 1947, 160 F. 2d 661. The same result was reached in *Evans* v. *Hudson Coal Co.*, 3rd Cir. 1948, 165 F. 2d 970. Before the next consideration of the question by the Third Circuit, Congress had reenacted the United States Arbitration Act and had included in the reenactment the following catch line of Section 1, " 'Maritime Transactions' and 'Commerce' Defined; Exceptions to Operation of Title". Act of July 30, 1947 (H. R. 2084), ch. 392, 61 Stat. 669. This, thought the court, in the next

case before it, indicated a congressional intent that the exclusion in Section 1 applied to the entire Act, and it was held that collective bargaining agreements were "contracts of employment" within the meaning of the Act. *Amalga-* [fol. 106] *mated Ass'n, etc.* v. *Pennsylvania Greyhound Lines,* 3rd Cir. 1951, 192 F. 2d 310. This was followed in *Pennsylvania Greyhound Lines* v. *Amalgamated Ass'n,* 3rd Cir. 1951, 193 F. 2d 327.

In the most recent of the Third Circuit cases which we have noted, it was said by a divided court that a collective bargaining agreement between an employer producing goods for subsequent sale in interstate commerce, as is the employer in the case before us, and a union, is within the meaning of a contract in an "industry affecting commerce" as used in Section 301 of the Labor Management Relations Act of 1947, but that such a contract is not one of "employment of . . . workers engaged in foreign or interstate commerce" within the exclusion clause of Section 1 of the Arbitration Act. A majority of the court reconciled the decision with the prior holdings by saying that the two Pennsylvania Greyhound Lines cases involved employees engaged in interstate transportation, excluded by Section 1, and that the other earlier cases involved employees producing goods for subsequent resale in commerce, and not covered, said the court, by the exclusion clause. Two of the judges thought that collective bargaining agreements were not "contracts of employment" within the purview of Section 1 of the Arbitration Act, and were of the belief that the Pennsylvania Greyhound Lines cases should be expressly overruled. Two judges dissented. The court directed the granting of a stay pending arbitration. *Tenney* v. *United Electrical R & M Workers,* 3rd Cir. 1953, 207 F. 2d 450.

[fol. 107] The Fourth Circuit departs from the Third Circuit and has held that the Arbitration Act does not authorize enforcement of arbitration provisions in collective bargaining agreements. Speaking for the Court and referring to Section 1 of the Arbitration Act, Chief Judge Parker has said:

> "Art. I of that Act of February 12, 1925, c. 213, as reenacted by the Act of July 30, 1947, c. 392, 9 U.S.C.A.

§1, contains nothing but definitions of 'maritime transactions' and 'commerce' and an excepting clause; and we think it clear that the excepting clause was intended to apply to the entire act." *International Union* v. *Colonial Hardwood Floor Co.*, 4th Cir. 1948, 168 F. 2d 33.

The Colonial Hardwood case was followed in *United Electrical R. & M. Workers* v. *Milier Metal Products*, 4th Cir. 1954, 215 F. 2d 221.

It seems to us that the Sixth Circuit originally reached the same conclusion as had been pronounced in the Fourth. In a well reasoned opinion by Judge Hamilton wherein the first Donahue case, *supra*, is criticized, it is said:

"The scope of the exception or proviso in the statute must be gathered from the view of the whole law, and if the language of the exception is in perfect harmony with the general scope of the entire statute, the exclusion is applicable to the whole act. It is clear that the exception here in question was deliberately worded by the Congress to exclude from the National Arbitration Act all contracts of employment of workers engaged [fol. 108] in interstate commerce. Section 2 of the Act makes valid and irrevocable all arbitration agreements in writing to submit to arbitration future controversies arising out of the contract of which the arbitration agreement was a part. It would be senseless to say that the exclusion from the Act covers the validity of the contract, but excludes the stay provision of Section 3. The reason for the exclusion is applicable to the entire Act. The language of the exclusion 'herein contained' is found in the first section of the Act. This section is made up entirely of definitions and exceptions to the operation of the title. 'Herein' as used in legal phraseology is a locative adverb and its meaning is to be determined by the context. It may refer to the section, the chapter or the entire enactment in which it is used. The fact that it was used in the present Act in a section where none of the substantive matter set up in the succeeding sections of the Act appeared must mean that it is to be applied to the whole Act

and not to any given section. There can be no doubt that the contract in issue is a contract of employment. Appellant insists that the exception relates only to the subject specified in the title. If we give full weight to appellant's contention, its argument must fail because the title not only states that its purpose is to make valid arbitration contracts but also to make them enforceable. Section 3 sets up one of the methods of enforcement." *Gatliff Coal Co.* v. *Cox*, 6th Cir. 1944, 142 F. 2d 876.

[fol. 109] But in a later case from the Sixth Circuit the court notes the conflicts. It adhered to its earlier view that the exclusion proviso of Section 1 of the United States Arbitration Act applies to the entire act, but it held that the collective bargaining agreement before it was a trade agreement and not a "contract of employment" within the exclusion clause. *Hoover Motor Express Co.* v. *Teamsters, Chauffeurs, etc.*, 6th Cir. 1954, 217 F. 2d 49.

As to the effect of the United States Arbitration Act in the case before us, we align ourselves with the Fourth Circuit and hold that the collective bargaining agreement before us is a "contract of employment" within the meaning of the Arbitration Act and as such is excluded from the application of the act by its express terms. The earlier cases and their effect are commended upon in 17 Law and Contemporary Problems 580, and 65 Harv. L. Rev. 1238. Though the Norris-La Guardia Act does not preclude, the United States Arbitration Act does not authorize the judicial enforcement of a contractual undertaking to submit to arbitration grievances arising under a collective bargaining agreement.

This brings us to the question of whether Section 301(a) of the Labor Management Relations Act of 1947, 29 U.S.C.A. §185(a), hereinbefore quoted, provides for the enforcement of a provision for arbitration contained in a collective bargaining contract between an employer and a labor organization of employees engaged in producing goods for subsequent sale in interstate commerce. The Court of Appeals of the Tenth Circuit has given us, as

[fol. 110] dictum perhaps, a succinct answer to the query. It said:

> "This statute [29 U.S.C.A. §185(a)] is for the purpose only of giving jurisdiction to the federal courts in cases involving labor contracts. It does not give the federal courts any different or additional power than a state court would have if the action had been brought there": *Mercury Oil Refining Co.* v. *Oil Workers Int. Union, CIO*, 10th Cir. 1951, 187 F. 2d 980.

In a decision from the Second Circuit it is stated:

> "But § 301 . . . created a remedy where none existed before and provided a forum in which to enforce it." *Shirley-Herman Co.* v. *International Hod Carriers, etc.*, 2d Cir. 1950, 182 F. 2d 806, 17 A.L.R. 2d 609.

In the Shirley-Herman case the remedy to which reference was made as being created by the statute was the right to sue a labor union as such and the right of unions to bring and maintain judicial actions. We think it unnecessary to consider other decisions of the Courts of Appeal or enter upon a review of District Court cases, of which there are a number. The answer to this phase of our inquiry is to be found, we think, in the opinions of the Supreme Court in *Association of Westinghouse Salaried Employees* v. *Westinghouse Electric Corp.*, 1955, 348 U. S. 437, 75 S. Ct. 488, 99 L. Ed. (Advance p. 368).

Perhaps it cannot fairly be said that the ratio decidendi of the Westinghouse case is more than that a Federal District Court does not have jurisdiction under Section 301 [fol. 111] over an action brought by a union against an employer under a collective bargaining agreement on behalf of employees for wages which the employer refused to pay and which refusal the union asserted was in violation of the agreement. But in the several opinions we find a guide for our decision. Mr. Justice Frankfurter, with whose views Justices Burton and Minton concurred, found that if the "plain meaning" rule of construction could be applied, then all Section 301 does is to give procedural directions to the Federal courts to treat labor unions as

natural or corporate persons in actions involving collective bargaining agreements, and to do so regardless of the amount in controversy and not to require diversity of citizenship. In considering the intent of Congress, Mr. Justice Frankfurter found that its aim was to open the Federal Courts to such suits solely because they were between the union and employers, but without providing any Federal law other than procedural for such suits. "It was evident", said Mr. Justice Frankfurter, "that the specific desire was to remove procedural obstacles to suit by and against the union." He quoted Senator Taft, in proposing an amendment approximating §301, as saying:

> ". . . All we provide in the amendment is that voluntary associations shall in effect be suable as if they were corporations, and suable in the Federal courts if the contract involves interstate commerce and therefore involves a Federal question."

A question was raised by Mr. Justice Frankfurter as to whether the construction dictated by the "plain meaning rule" and by the intent of Congress could be placed within [fol. 112] the constitutional restriction of Federal jurisdiction to cases arising under the Constitution and laws of the United States, etc. U. S. Const. Art. III, §2. It was necessary, thought Mr. Justice Frankfurter, to limit the scope of the Act as "doubtful legislation". The Court of Appeals, in its consideration of the Westinghouse case, had proceeded upon the so-called "electric theory" that the collective bargaining agreement is not of itself a contract of hiring, that each employee makes with the employer a separate contract of hiring from which stems the obligation to pay wages, and that, while Section 301 creates "a federal substantive right", there is jurisdiction only of causes of action between a union and an employer. Since the Court of Appeals did not regard a breach of the obligation to pay wages as creating a cause of action in the union, it rejected Federal jurisdiction. *Association* v. *Westinghouse Electric Corp.* 3rd Cir. 1954, 210 F. 2d 623. Mr. Justice Frankfurter disagreed with the Court of Appeals, and indicated his view to be that no new federal law con-

cepts of contractual interpretation were intended by the enactment of Section 301.

Mr. Chief Justice Warren, joined by Mr. Justice Clark, concurred and were of the opinion that it was enough to say that Section 301 was not sufficiently explicit nor its legislative history sufficiently clear to indicate that Congress intended to authorize a union to enforce in a federal court the right of an employee to receive wages; and being of such opinion, they saw no reason to make labor policy or raise constitutional issues. Mr. Justice Reed also concurred in the result. He took the position that it was the intent of Congress to give federal jurisdiction over actions arising from breaches of collective bargaining agreements [fol. 113] whether the rules of substantive law are derived from federal or state sources. He concluded, as did the Court of Appeals, that a breach of the duty to pay wages was a violation of an individual employment contract and not of the collective bargaining agreement.

In a dissenting opinion in the Westinghouse case, Mr. Justice Douglas, with whom Mr. Justice Black concurred, there was disagreement with the majority refusal to permit the Union to bring the suit. The minority did, however, concur in the view of Mr. Justice Reed that Congress "created federal sanctions for collective bargaining agreements, made cases and controversies concerning them justiciable questions for the federal courts, and permitted those courts to fashion from the federal statute, from state law, or from other germane sources, federal rules for the construction and interpretation of those collective bargaining agreements".

We have, in the case before us, a complaint by the Union that the Employer has breached a provision of a collective bargaining agreement. Out of such complaint arise a case and controversy of which the Federal courts have jurisdiction under the Constitution as implemented by Section 301. And see 28 U.S.C.A. §1337. But it does not follow that because jurisdiction is given to Federal courts, there is a new federal law concept that authorizes the courts to enforce submission to arbitration. Before such a result is reached, we must find a rule of law derived from state or Federal sources. We do not think it matters whether a

right to enforce submission to arbitration is or is not substantive, as was considered in *Bernhardt* v. *Polygraphic Company of America*, 2nd Cir. 1954, 218 F. 2d 948; or [fol.114] whether as said by Mr. Justice Brandeis, there is "the substantive right created by an agreement to submit disputes to arbitration", which he said "is recognized as a perfect obligation." *Red Cross Line* v. *Atlantic Fruit Co.*, 1924, 264 U. S. 109, 44 S. Ct. 274, 68 L. Ed. 582.

Finding nothing of Federal origin or in the laws of Alabama, of either common law or statutory enactment, or from any other source, that requires or permits, or from which we might, in the language of Mr. Justice Douglas, fashion a rule requiring or permitting, the enforcement of the covenant for arbitration of grievances, and concluding that Section 301 does not of itself provide or furnish the source for such a rule, we hold that there is no legal right to the relief sought.

In the determination of the case before us, it was held that, since the grievances arose while the collective bargaining agreement was in effect, the Employer was required to arbitrate such grievances subsequent to the termination date of the agreement. Although unwilling to adopt the most recent conclusions of the Third Circuit in construing the United States Arbitration Act, we are impressed by its views with respect to the effect of the termination of a collective bargaining agreement upon Section 301 procedure. After reciting the giving of notice of termination and the failure of negotiations toward a new contract between an employer and a union, the court said:

> "The old contract thereupon terminated pursuant to the permitted election already made manifest by [fol. 115] timely notice as provided in the document itself. The obligation not to strike, like the other obligations of the contract ceased to exist. For this reason the complaint was properly dismissed". *Paterson Parchment Paper Co.* v. *International Brotherhood*, 3rd Cir. 1951, 191 F. 2d 252.

Finding as we do that compliance with a covenant for arbitration in a collective bargaining agreement will not be compelled by a Federal court judgment where the courts

of the state would deny such relief, it follows that there was no enforceable right which could have been either retained or lost upon the termination of the agreement. Hence we need not and do not decide whether such a covenant would survive where, under the applicable law, such a provision might have been enforced during the term of the agreement.

It is the view of this Court that the District Court erred in not sustaining the defendant's motion to dismiss the action because the complaint fails to state a claim against defendant upon which relief can be granted. Therefore, with a direction to sustain the motion to dismiss, the judgment appealed from is

Reversed.

BROWN, Circuit Judge, dissenting:

The majority declares plainly that the District Court had jurisdiction. It does that on the basis of §301. With this I am in complete agreement. But applying the rationale [fol. 116] of Mr. Justice Frankfurter's opinion as though it was all that was said by a court of eight, §301 is confined rigorously to the procedural concept. Finding neither state nor federal statute (apart from §301) authorizing injunctive enforcement of the agreement to arbitrate, the majority concludes that the court with power is yet powerless to proceed—it has power but no tools—in short, the door is opened but the hall is empty. I decline to believe that power is so sterile or that §301, if needed to bridge any gaps, exhausts itself by opening the door.

On jurisdiction I would spell out what seems implicit in the majority opinion: This is, on all tests, a *union* controversy in which the union is asserting in its collective capacity a demand relating to all of the employees as a group, on the one hand, and the employer, as such on the other. It is not the assertion, through name or guise of the union, of a single claim for one or the aggregation of many single claims for all arising under the individual contracts of employment, as such, between employee and employer. Arbitration, as the last step in the grievance machinery,

is in explicit terms the undertaking[1] of union and employer, and by its nature, its force and hence effectiveness, is [fol. 117] derived from employer and union pledging that each will be bound. It is, we all agree,[2] therefore a case for §301.

What law was then to be applied? Side-stepping the engaging prospect of divining the mathematical probabilities of decision on this point amongst Justices splitting

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[1] Article VIII prescribes the steps. In Step 1 between Room Steward and department Overseer, Step 2 General Shop Committee and Mill Superintendent, the aggrieved employee may, "in his discretion" accompany the union representatives; but in Step 3 between the union and a representative of Employer's executive management and in Step 4 (adopting arbitration under IX(F)), it is strictly between union and employer.

Article IX(A) states: "The employer and the union agree that the grievance procedures provided herein are adequate to provide a fair and final determination of all grievances * * *. It is the desire of the Union and the Employer to avoid strikes and work stoppages." Sub-paragraphs (B), (C), (D) and (E) contain a precise set of rules for the consequences of strikes, wildcat strikes, slowdowns, and other stoppages in disregard of the agreement to exhaust grievance machinery, including arbitration.

Sub-paragraph (E) makes it clear that both parties thought this was a §301 contract as the employer releases the union from liability for damages on the part of the union, its officers, agents or members "for breach of contract of any kind or character whatsoever" in consideration of the union's agreement to make the grievance machinery effectual.

[2] Our case International Molders etc. v. Western Foundry Company No. 15235, decided March 30, 1955 (remanded, per curiam, to dismiss for lack of jurisdiction); certiorari denied November 7, 1955, 24 Law Week 3126, applied *Westinghouse* to claim by union for wage increases due employees; Ferguson-Steere Motor Co. v. International Brotherhood etc., 5 Cir., 223 F.2d 842, held that §301 could not be used to by-pass the National Labor Relations Board.

on a 3-2-1-2 combination, the court determines that under neither Alabama nor Federal law is there a right to enforce arbitration.

I am willing here to accept this cautious approach and assume that Alabama[3] will not specifically enforce an agreement to arbitrate and that the United States Arbi- [fol. 118] tration Act, 9 U.S.C. 1, is not available[4] or effective to supply the federal statutory mechanics for arbitration.

But the studied search for a federal statute, the painstaking analysis of the cases under it, demonstrates, I think, a misconception of the fundamentals. It is as though we were dealing with a court having statutory power only. But that is not the case. The United States District Court.

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[3] Alabama may be reluctant as to remedy but not as to general validity. Alabama's constitution and statutes contain provisions indicating a public policy favorable to arbitration in general and spelling out in detail a system and procedure of arbitration. Code of Alabama, Constitution of 1901, Article 4 §84; Code of Alabama Title 7 §829 (formerly 2908) thru §844 (formerly 2923). §844 states that the statute is cumulative rather than restrictive, but §829, 830, and 831 may indicate that the statute and public policy are limited to agreements to arbitrate specific disputes already arisen and do not comprehend agreements for arbitration of future disputes. See Headley v. Aetna Insurance Co., 202 Ala. 384, 80 So. 466, 467; Ex parte Birmingham Fire Insurance Co. (Sup. Ct. Ala.) 172 So. 99, 101; Caldwell v. Caldwell, 157 Ala. 119, 47 So. 268, 269.

[4] See, The Federal Enforcement of Labor Arbitration Agreements, Seymour Phillip Kaye, New York University Sixth Annual Conference on Labor, 1953, p. 207, a detailed discussion of this problem and legislative history of the Arbitration Act; Legal Aspects of Labor Arbitration, Lee Epstein, New York University Second Annual Conference on Labor, 1949, p. 383 at 388; Labor Arbitration—The Arbitrable Issue, Ralph E. Kharas, Fifth Annual Conference on Labor, 1952, pp. 633, 637, 638; Legal Status of Labor Arbitration, Jesse Freidin, New York University First Annual Conference on Labor Law, 1948, 233, 247, 251.

is a constitutional organ with the intrinsic capacity to grant traditional coercive relief as the cause over which it has jurisdiction may require. *Williamson* v. *Berry*, 8 How. 495, 536, 12 L.Ed. 1170, 1187, "Jurisdiction in chancery is inherent and original, comprehending now almost every exigency of human disagreement, for which there is not an adequate remedy at law."

Judge Goodrich in the recent opinion in *Johnson, Warden* v. *Marsh*, No. 11,713 (November 30, 1955) . . . . . F.2d . . . . not yet reported, finding ample inherent power to grant bail even though no statute can be found described both this full power to act once the court acquires jurisdiction [here by virtue of §301] and the basic misconception that the district court can do only that which some statute permits:

> "The statement is often made that the inferior courts of the United States are courts of limited juris- [fol. 119] diction. This is a truism in one sense. These courts are competent to act in such cases, and only in such cases, as the Congress, pursuant to the Constitution, assigns to them. And unless constitutional provisions stand in the way, the assignment may be varied at the will of Congress. But within the area of activity assigned to them, Federal courts are courts of full stature, and we may rightly look to common law concepts and precedents to see the scope of the implied or 'inherent' authority which the judicial office carries with it. * * * We believe that the basic misconception in those decisions denying this authority lies in their view that since Federal courts have limited, statutory jurisdiction, their powers in proceedings involving this jurisdiction are necessarily limited and must be statutory. See Principle v. Ault, 62 F.Supp. 279, 282 (N.D. Ohio 1945). This, as already indicated, is not our view of the matter."

The remedy sought here is common and traditional—the equity injunction to compel or restrain action because of the inadequacy of the usual money damage. Its availability need find no source, as such, in specific statute. Indeed, it

has been the frequent instrument of effectual sanction for enforcement of the policy of statutes.[5] Since power is present and a traditional tool is available and effective, is there an obstacle to their full use? There is clearly no

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[5] The equity injunction has been a potent weapon to effectuate declared policy in the field of labor relations against severe attacks that the statute reflecting such policy [here it would be the Taft Hartley Act] was silent on such sanction: Texas & New Orleans Railroad Company v. Brotherhood of Ry. & S. S. Clerks, 281 U.S. 548; 74 L.Ed. 1034; Virginia Ry. Co. v. System Federation No. 40, 300 U.S. 515, 551, 81 L.Ed. 789, 801, "In considering the propriety of the equitable relief granted here, we cannot ignore the judgment of Congress, deliberately expressed in legislation, that where the obstruction of the company union is removed, the meeting of employers and employees at the conference table is a powerful aid to industrial peace." Steele v. L. & N. Railroad Co., 323 U.S. 192, 89 L.Ed. 173; Tunstal v. Brotherhood of L.F.&E., 323 U.S. 210, 89 L.Ed. 187; Graham v. Brotherhood of L.F.&E., 338 U.S. 232, 94 L.Ed. 22; Brotherhood of Railroad Trainmen v. Howard, 343 U.S. 768, 96 L.Ed. 1283.

See for other statutes: United States v. F. O. Morgan, 307 U.S. 183, 194, 83 L.Ed. 1211, 1218, 1219; Porter v. Warner Holding Company, 328 U.S. 395, 398, 90 L.Ed. 1332, 1336, 1337; Hecht Co. v. Bowles, 321 U.S. 321, 329, 331, 88 L.Ed. 754, 760, 761; Federal Power Commissioner v. Panhandle Eastern Pipe Line Co., 337 U.S. 498, 500, 93 L. Ed. 1499, 1502; Federal equity court grants or withholds its injunction to effectuate public policy, Hurd v. Hodge, 334 U.S. 24, 34, 35, 92 L.Ed. 1187, 1195.

This power to use a traditional federal equity remedy is so pervasive as to be available in diversity actions where, in a comparable situation, the local state court would not, or could not, grant equitable relief: see Guaranty Trust Co. v. York, 326 U.S. 99, 106, 89 L.Ed. 2079, 2084, 2085.

Federal equity court has great flexibility in molding relief in cases over which it has jurisdiction with all powers of the Court of Chancery: Sprague v. Ticonic National Bank, 307 U.S. 161, 164, 165, 167, 83 L.Ed. 1184, 1186, 1187;

[fol. 120] statutory[6] proscription, and an accurate treatment of historical precedent reveals no self-generated decisional policy against its use. Despite the flood of words that ordinarily executory contracts to arbitrate will not be specifically enforced, this reflects no federal policy of hositility to arbitration as such. On the contrary, arbitra-
[fol. 121] tion is given enthusiastic federal sanction[7] and where a general Congressional policy is plainly indicated that such a mechanism will be useful in effecting its legis-

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Barber v. Barber, 21 How. 582, 592, 16 L.Ed. 226, 229; it could hardly have this wide capacity were it required to find statutory basis for the remedy, its availability or use.

See also following which affirm an inherent power in a Federal Court to act: Wright v. Henkel, 190 U.S. 40, 63, 47 L.Ed. 948, 956; United States v. Hudson and Goodwin, 7 Cranch 32, 34, 11 U.S. 21, 23, 3 L.Ed. 259, 260; United States v. Shipp, 203 U.S. 563, 572, 573, 51 L.Ed. 319, 323.

[6] We are in accord that Norris-LaGuardia Act, 29 U.S.C. 101, does not forbid relief here. See also Textile Workers Union v. American Thread Co., D.C.Mass., 113 Fed.Supp. 137; Local 207 v. Landers, D.C.Conn., 119 Fed.Supp. 877; Milk and Ice Cream Drivers v. Gillespie Milk Products Corp., 6 Cir., 203 F.2d 650; Textile Union of America v. Aleo Mfg. Co., D.C.N.C., 94 Fed.Supp. 626; United Textile Workers v. Goodall Sanford, D.C.Me., 131 Fed.Supp. 767. Contra: Mead v. International Brotherhood, 1 Cir., 217 F.2d 6.

[7] The federal approach has not been that of many jurisdictions which, with jealous eye, scanned all such devices lest they infringe upon or oust the courts from their historic role. Judge Hough, in United States Asphalt Refining Co. v. Trinidad Lake Petroleum Co., Ltd., S.D.N.Y., 222 Fed. 1006, 1007, characterized it: "* * * A more unworthy genesis cannot be imagined." See Mr. Justice Story's comments from Tobey v. Bristol County, Fed. case #14065 quoted footnote 1 Red Cross Line v. Atlantic Fruit Co., 264 U.S. 109, 120, 68 L.Ed. 582, 585, and Mr. Justice Brandeis continued: "But an agreement for arbitration is valid, even if it provides for the determination of liability. If executory, a breach will support an action for damages.

lative aim, equity has the power, and the right, in the public interest, to make arbitration effective.[8]

[fol. 122] Clearly, arbitration is a welcome device to Congress. Indeed, the Arbitration Act itself, 9 U.S.C. 1, reflects a determination that the needs of the business and industrial world would be aided by giving procedural certainty and greater vitality to the use of voluntary non-court means of settling disputes. The express exclusion of "contracts of employment" is no left-handed, reverse reinstatement

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Hamilton v. Home Ins. Co., 137 U.S. 370, 385, 386, 34 L.Ed. 708, 713 * * *. If executed,—that is, if the award has been made,—effect will be given to the award in any appropriate proceeding at law or in equity. Karthaus v. Yallas Y. Ferrer, 1 Pet. 222, 7 L.Ed. 121; Burchell v. Marsh, 17 How. 344, 15 L.Ed. 96; Bayne v. Morris, 1 Wall. 97, 17 L.Ed. 495. And, although there is no federal legislation on the subject, an executory agreement, however comprehensive, will, if made a rule of court, be enforced in courts of the United States by any appropriate process. Hecker v. Fowler, 2 Wall. 123, 17 L.Ed. 759."

The court in Marine Transit Corp. v. Dreyfus, 284 U.S. 263, 277, 76 L.Ed. 282, 290, sustaining the United States Arbitration Statute characterized compulsion of arbitration as "one of remedy only."

[8] Virginia Railway Co. v. System Federation No. 40, supra, at 552, "* * * The peaceable settlement of labor controversies, * * * is a matter of public concern. * * * Courts of equity may, and frequently do, go much farther both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved * * *. The fact that Congress has indicated its purpose to make negotiation obligatory is in itself a declaration of public interest and policy which should be persuasive in inducing courts to give relief. It is for similar reasons that courts, which traditionally have refused to compel performance of a contract to submit to arbitration, Tobey v. Bristol County (C.C.) 3 Story, 800, Fed. Cas. No. 14,065, supra, enforce statutes commanding performance of arbitration agreements. Red Cross Line v. Atlantic Fruit Co. * * *; Maritime Transit Co. v. Dreyfus * * *."

of the ancient attitude of hostility—"contrary to public policy." Rather, the difficulties encountered by the Third, Fourth and Sixth Circuits in attempting to adapt that statute to the field of labor problems covered so long by special legislation bespeaks, perhaps, a Congressional prescience.

But Congress has been much more direct in its blessing. The Railway Labor Act, 45 U.S.C. 151 *et seq.*, is a detailed framework of voluntary conciliation and mediation with arbitration awards being final, binding and legally enforceable.[9] This same scheme is duplicated for airline carriers, 45 U.S.C. 181, *et seq.* Moreover, the Labor Management Relations Act of 1947 contains the positive declaration that it is the policy of the United States that "sound and stable industrial peace and the advancement of the general welfare, health and safety of the Nation * * * can most satisfactorily be secured * * *" by settlement of issues between employers and employees by conciliation, mediation, and voluntary arbitration. This is stated, not alone in categori- [fol. 123] cal terms, 29 U.S.C. 171 through 178, but the public interest is so direct that the statute establishes the Federal Mediation and Conciliation Service, an independent agency, as an arm of the Government operating at public expense.[10]

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[9] The Adjustment Boards, §153, are in reality bipartisan arbitrations whose awards are final, 153 First (m) and enforceable within two years by court petition (p) (q); §157 provides for arbitration of disputes not settled by mediation or Board of Adjustment under §§151-156, and under §158 (1) awards are binding, are filed (k) in the Federal District Court where, under §159 the award is conclusive and on which the court shall enter judgment unless set aside for one of three limited, specific grounds.

[10] Governmental assistance through the Mediation Service is specifically directed to settlement of differences by mutual agreement through conference, collective bargaining, "or by such methods as may be provided for in any applicable agreement for the settlement of disputes" (§171); this is spelled out further in 173 (d), "Final adjustment by a method agreed upon by the parties is declared

In every modern piece of labor legislation, the Congress has either directed the establishment of arbitration systems or has recognized the essential desirability of their existence with the full force of the Government, its prestige, and its treasury behind them as an essential device for maintenance of industrial peace. In such an atmosphere it contradicts all that Congress has done to resurrect the [fol. 124] bones of an ancient day to find some supervening notion that arbitration agreements, while tolerated to the point of acceptance once completed, are inherently evil and beneath the claim of right which the Chancellor will affirmatively protect.

The power exists over parties and cause by §301. The

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to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement. The Service is directed to make its conciliation and mediation services available in the settlement of such grievance disputes only as a last resort and in exceptional cases."

See, Legal Aspects of Labor Arbitration, Epstein at p. 389, cited footnote 4, *supra;*

Forkosch, Treatise on Labor Law, 1953, 476-488, in a detailed analysis suggests that the policy on arbitration is so strong that it might even be compulsory, at least in satisfying the conditions precedent to a Norris-LaGuardia injunction. This is certainly the plain holding of Brotherhood of Railway Trainmen v. Toledo, Peoria, and Western Railroad, 321 U.S. 50, 88 L.Ed. 534, and its rejection of the holding of this Court, Mayo v. Dean, 5 Cir., 82 F.2d 554 (see Supreme Court discussion at 321 U.S. 61, 88 L.Ed. 541). The words of §108 (29 U.S.C.A. 108) are categorical that it is the policy of Congress that, "every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or *voluntary arbitration*" shall be made. Inscribed so plainly and announced for such a length of time (since 1932), it seems unlikely to think that Congress must spell it out again.

See United Office and Professional Workers of America v. Monumental Life Ins. Co., E.D.Pa., 88 Fed.Supp. 602, 607.

remedy sought is traditional, common and effective. There is no policy against its use and there is overwhelming evidence of a Congressional purpose to encourage, facilitate and make effectual all of the collective processes of bargaining, conciliation, mediation and arbitration. On this approach it is the use of the federal power, a federal remedy to effectuate a federal policy. There is no need to draw upon state jurisprudence with the constitutional uncertainties involved.

Moreover, this gives a cohesive consistency to the total federal labor picture. Federal constitutional power is amply present under this very Labor Management Relations Act to require employer and employees to bargain in good faith on the inclusion[11] of an agreement to arbitrate in the bargaining contract and to issue necessary coercive orders to effectuate it, to protect parties from charges of unfair labor practice[12] and deny reinstatement[13] to displace strik-

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[11] 29 U.S.C. 158 (a)(5). In NLRB v. Corsicana Cotton Mills, 5 Cir., 179 F.2d 234, 235, a contempt proceeding for violation of cease and desist order, we exerted a supervisory administration of the collective bargaining process, one of the points in controversy being the arbitration clause. See NLRB v. American National Insurance Co., 343 U.S. 395, 407, 408, 96 L.Ed. 1027, 1038, 1039, requiring, but finding, good faith negotiation on the issue of a "management functions clause" versus "unlimited arbitration clause."

[12] See Timken Roller Bearing Co. v. NLRB, 6 Cir., 161 F.2d 949. Without invoking grievance machinery including arbitration for layoff of ten employees, union struck, employer refused further to entertain grievances and Board found employer guilty of unfair labor practice for failure to bargain; the court reverses holding that to require compliance with the contract including the agreement to submit to arbitration is the essence of collective bargaining in good faith; likewise, it held the union strike over a demand against subcontracting unlawful since the question whether subcontracting was or was not within the "management functions clause" was itself an arbitratable issue.

See also, NLRB v. Standard Oil Co., 6 Cir., 196 F.2d 892.

[13] W. L. Mead, Inc., 113 LRB 109, 5 CCH Labor Law Re-

[fol. 125] ers where the strike is a breach of the agreement to arbitrate.

Arbitration is now the usual, almost universal mechanism to assure industrial peace during the life of the contract. Unlike its frequent use in commercial fields as a substitute for the costly delays and uncertainties of court litigation, the device is adopted in labor relations as a substitute for the economic pressures each can marshal in the strike or lockout, or the threat of either.[14] It would be incongruous

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ports (4th Edition), par. 53162, Labor Law Journal, October 1955, Vol. 6 No. 10, p. 721; 20 employees walked off job, established a picket line to enforce demands concerning definition of duties and working hours of a truck driver after employer requested arbitration pursuant to arbitration clause in bargaining agreement. General Counsel brought complaint for refusal to rehire; Board reversed Trial Examiner and held employer could lawfully discharge the strikers. The Board stated: "* * * There can be no question but that in the case before us the grievance and arbitration clause * * * is a material provision of that agreement. * * *. We find that [the contract] * * * excluded any other means but arbitration for the resolution of disputes, particularly unilateral action by any party * * *.

"Every encouragement should be given to the making and enforcement of such clauses. * * * To hold that a strike in furtherance of such a material breach of a clear and binding contractual arbitration clause is to be protected by this Board would be contrary to the labor policy embodied in the National Labor Relations Act as interpreted by the Courts of Appeals and the Supreme Court."

[14] As perhaps unique proof of its unpartisanship arbitration has the rare distinction of being praised and feared by management and labor alike. Peter Seitz, a management representative, in The Enforcement of Collective Bargaining Contracts By Arbitration, New York University Sixth Annual Conference on Labor, 1953, p. 15, describes it: "The first fact to note is that arbitration is what I call a 'glandular' word. By that I mean that the mere articulation of the word causes thyroid and adrenal glands to secrete. Mention the term and calm men get bloodshot eyes; pulses throb and

[fol. 126] indeed to find difficulty or even doubt, that a sovereign which can constitutionally compel the parties seriously in good faith to negotiate for an agreement to arbi- [fol. 127] trate, and punish and coerce them into compliance with it by administrative orders, sanctions or the denial of them with the added prestige of court approval by appellate review, will lack the power when its constitutional court is asked to grant a traditional remedy which will have the same end.

If I am mistaken that the network of federal labor legislation is the culture in which the Congressional policy of encouraging effective enforcement of arbitration can grow into a basis for an equity court granting an injunction, I would nonetheless reach the same result by using, for the

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temperatures rise. This is specially interesting because the identical, violent, physical and emotional reactions will be observed in both management and labor representatives * * * [the] attitude toward arbitration is not unlike that of George Wither, the Restoration poet, who impatient with the conspicuous lack of affection demonstrated by his lady-love proclaimed:

> " 'If she be not so to me,
> What care I how fair she be?' "

The widespread use commenced during the war days under the National War Labor Board and was stimulated later by the President's National Labor-Management Conference of 1945 attended by delegates representing AFL, CIO, Mine Workers, Railway Brotherhoods, United States Chamber of Commerce, National Association of Manufacturers which recommended final determination of grievances involving the interpretation or application of the collective bargaining agreement by an impartial chairman, arbitrator, or board, the decision of which should be final and binding on both, with specific machinery agreed to on the selection of the arbitrator (the agreement in this case tracks it closely). U. S. Department of Labor, Division of Labor Standards Bulletin No. 77, pp. 42, 43, 1946. A study made by the Bureau of National Affairs, Inc., 1950, indicated that at least 80% of the collective bargaining agreements in the nation's important industries provided for

first time, §301 in a modified substantive way. I do this since I believe that §301 is much more than a mere photo-electric cell to open wide the door as union-employer, *vis-a-vis*, approach. When a genuine *union* controversy, i.e., a 301 suit comes before it, the combinations of dissenting and concurring opinions in *Westinghouse* will, I believe, restore sufficient vitality to §301 to enable it to reflect federal policy itself and reach out comfortably, as the occasion may require, into state and federal concepts to fashion the controlling law. Whether this will be the creation of new federal rights or merely the release of its nascent powers, this reading of §301 would say to the district court that if there has been a breach of the collective bargaining agreement it shall exert whatever of its traditional weapons—the money judgment, the declaratory pronouncement, or the equity injunction—which will best assure contractual compliance.

Difficulties in forging a responsive jurisprudence neither indicate nor foretell a constitutional void, and it seems [fol. 128] surprising at this late date that our flexible judicial apparatus, because of the likelihood of conflict with

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arbitration as the terminal point of the grievance machinery. See, How Arbitration Works, Elkourie, 1952, The Bureau of National Affairs, Inc., pp. 6-10; Arbitration and Arbitration Provisions, J. Noble Braden, Tribunal Vice-President, American Arbitration Association, New York University Second Annual Conference on Labor, 1949, 355, 365. There has been a steady growth in percentage of agreements to arbitrate, from 73% in 1944 to 83% in 1949, Arbitration Provisions in Union Agreements in 1949, James Nix, Monthly Labor Review, February 1950, pp. 160-165, to approximately 91% in 1942, Arbitration Provisions in Collective Agreements, 1952, Ernestene M. Moore and James Nix, Monthly Labor Review, U. S. Department of Labor, Bureau of Labor Statistics, March 1953, pp. 261-266. The value of arbitration in the workaday handling of labor relations is attested by the practice of making formal, written arbitration reports which are indexed, digested and reported. See, Labor Arbitration Reports, The Bureau of National Affairs, Inc., approximately 21 volumes published.

local law, should shrink from the necessity. The federal system has so well demonstrated its fluid capacity[15] that, applying its rule, doctrines frequently ignore, often reject, and frequently collide with local (state) principles[16] and, where needed to effectuate Congressional will, the

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[15] The federal courts have fashioned suitable federal principles in countless situations to effectuate multiple federal policies: Tort rules under Federal Employers Liability Act, Jesionowski v. Boston & M. R. R., 329 U.S. 452, 91 L.Ed. 416, Central Vermont Ry. Co. v. White, 238 U.S. 507, 59 L.Ed. 1433; The Jones Act, 46 U.S.C., 688, Socony-Vacuum Oil Co. v. Smith, 305 U.S. 424, 83 L.Ed. 265; Laches in the enforcement of federal rights, Holmberg v. Armbrecht, 327 U.S. 392, 90 L.Ed. 743; Government contracts, Priebe & Sons v. United States, 332 U.S. 407, 92 L.Ed. 32, Federal Crop Ins. Corp. v. Merrill, 332 U.S. 380, 92 L.Ed. 10; Federal negotiable instruments and bonds, Clearfield Trust Co. v. United States, 318 U.S. 363, 87 L.Ed. 838, National Metropolitan Bank v. United States, 323 U.S. 454, 89 L.Ed. 383, Continental American Bank & Trust Co. v. United States, 5 Cir., 161 F.2d 935, D'Oench, Duhme & Co. v. Federal Deposit Insurance Corp., 315 U.S. 447, 86 L.Ed. 956; Problems incident to National Banking System, Deitrick v. Greaney, 309 U.S. 190, 84 L.Ed. 694; Liabilities in performance interstate transportation contracts, O'Brien v. Western Union Telegraph Co., 1 Cir., 113 F.2d 539; and see Moore's Commentary on the United States Judicial Code, 1949, pp. 340-359, revealing, in detail, the development of a full body of law adequate to give life to federal policy.

[16] Spectacular illustrations are found in the field of federal taxation: Burnet v. Harmel, 287 U.S. 103, 77 L.Ed. 199, property status oil lease under local (Texas) law rejected; Burk—Waggner Oil Association v. Hopkins, 269 U.S. 110, 111, 114, 70 L.Ed. 183, 185, state law disregarded in determining status of group as partnership or corporation for income tax purposes; Lyeth v. Hoey, 305 U.S. 188, 83 L.Ed. 117, nature of interest under inheritance.

Similarly, state standards on existence of independent contractor relationship and the common law concept of direction and control, are frequently rejected: Rutherford

[fol. 129] conflict and collision[17] may occur between two federal statutes or policies.

The agreement to arbitrate, for employer and employees alike, goes to the very heart of the collective contract. The native forces of competing economic pressures are held in leash by it. Repudiation by either is a challenge which §301 sought to answer. If it is not available here, then nought[18]

Food Corp. v. McComb, 331 U.S. 722, United States v. Silk, 331 U.S. 704, Harrison v. Greyvan Lines, 331 U.S. 704, 715, 719; NLRB v. Hearst, 322 U.S. 111, 124-133.

[17] The same situation or circumstance frequently produces diverse results: e.g., direction and control of trucks, adequate to create genuine independent contractor relationship under Wage & Hour Law, and Social Security Law, United States v. Silk, 331 U.S. 704, Harrison v. Greyvan Lines, 331 U.S. 704, is insufficient to make physical performance by owner-drivers of trucks "transportation" under National Transportation Act, 49 U.S.C. 301, United States v. Rosenblum Truck Lines, 315 U.S. 50, 86 L.Ed. 671, Thomson v. United States, 321 U.S. 19, 88 L.Ed. 513; a crew member of a non-self-propelled dredge is a "seaman" under the Jones Act, 46 U.S.C. 688, McKie v. Diamond Marine Co., 5 Cir., 204 F.2d 132, but not a "seaman" under the Wage & Hour Act, Walling v. W. D. Haden Co., 5 Cir., 153 F.2d 196, Cert. Den. 328 U.S. 866, 90 L.Ed. 1636; Towing of barges physically performed by chartered tug is not "transportation" by tug owner-operator under the Interstate Commerce Act, 49 U.S.C. 901, 909 (a), De Bardeleben Coal Corp. v. United States, W.D.Pa., 54 Fed.Supp. 643, affirming Union Barge Line Application, 250 I.C.C. 689, but is "transportation" for transportation tax under 26 U.S.C. 3475 (a), Gulf Coast Towing Co. v. United States, 5 Cir., 196 F.2d 944.

[18] The court's action in International Ladies' Garment Workers, etc. v. Jay-Ann Co. No. 15,636, with this one, chipping away from §301, adds only to the uncertainty. The court finds no jurisdiction to enforce the agreement to make payments by employer to the union's welfare fund. I would disagree with it as well: That, too, seems to me to be a genuine *union* controversy; and finding no jurisdiction it is actually in conflict with the majority here.

is left of §301 but the right to sue for money damages. Had that been the narrow hope of Congress, just such simple words would have been used.

[fol. 130] The injunctive order to compel arbitration was right and should be affirmed.

I therefore respectfully dissent.

[fol. 131] No. 15697

LINCOLN MILLS OF ALABAMA,

Versus

TEXTILE WORKERS UNION OF AMERICA, CIO

JUDGMENT—January 31, 1956

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Alabama, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from in this cause be, and the same is hereby, reversed with a direction to sustain the motion to dismiss;

It is further ordered and adjudged that the appellee, Textile Workers Union of America, CIO, be condemned to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

"BROWN, Circuit Judge, dissenting."

[fol. 132] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 133] SUPREME COURT OF THE UNITED STATES

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

Upon consideration of the application of counsel for petitioner,

It is ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including June 29, 1956.

Harold H. Burton, Associate Justice of the Supreme Court of the United States.

Dated this 19th day of April, 1956.

[fol. 134] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 8, 1956

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Black took no part in the consideration or decision of this application.